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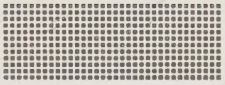

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VOLUME XVII

FOR THE YEAR 1903

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The Year Books Series

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Selden Society

YEAR BOOKS OF EDWARD II.

VOL. I.

1 & 2 EDWARD II.

A.D. 1307–1309

EDITED
FOR THE SELDEN SOCIETY
BY
F. W. MAITLAND

He [Serjeant Maynard] had such a relish of the old year-books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.

ROGER NORTH

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.

ALBERT SOREL

LONDON
BERNARD QUARITCH, 15 PICCADILLY
1903

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PREFACE

In preparing this volume I have had the assistance of Mr. G. J. Turner of Lincoln's Inn, who is well known to all members of the Society by his volume of Forest Pleas. Of the learning, skill, and industry that he showed in searching the Plea Rolls for cases reported in the Year Books I cannot speak too highly or too gratefully. I have also to thank the Honorary Secretary for much help very kindly given, especially in the somewhat difficult work of settling the form that this book should take. Lastly, 'I think good to mention in remembrance of my love and duty almae matri Academiae Cantebrigiae' (Co. Lit. 109 b), that I have been allowed the inestimable privilege of pursuing my task where the sun shines upon the Fortunate Islands.

F. W. Maitland.

Downing College, Cambridge,
September 1, 1903.

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INTRODUCTION

1. Of the Year Books in General.
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I. Of the Year Books in General

The Selden Society, which was founded 'to encourage the study and advance the knowledge of the history of English law,' would hardly be doing all that it might for the accomplishment of this purpose if it made no endeavour to redeem the Year Books from that kingdom of darkness in which they are captives, and to hasten the day when they will once more be readable, intelligible and—we do not fear to say it—enjoyable books. The work has been begun, and well begun, by others. Can we not lend a helping hand ?

When all has been said that it is fair to say of England's wealth of legal records, the truth remains that the history of English law from the days of Edward I. to the days of Edward VII. must be primarily sought, not in records properly so called, but in reports. To this may be added that in the way of intellectual products medieval England had nothing more purely English to show than its law reports, its Year Books.

The record of litigation, the officially made and officially preserved record, was not—this need scarcely be said—distinctively English. So soon as many men could write, it was natural that the art of writing should be employed for this purpose. Indeed, we cannot without an effort imagine ourselves in an age when a court of law has no written memory of what it has done. Two main objects a roll would serve. In the first place, it would prevent disputes as to what had happened in some still pending cause. Had the defendant appeared ? Had the plaintiff pleaded ? Such questions might be

conclusively answered even though some judges had died and others filled their place. Secondly, when that cause was finished the recorded result would debar the parties and their heirs from re-opening a question that had been closed. In England our *exceptio rei iudicatae* becomes a plea that our adversary is 'estopped by matter of record.' Then, again, what we may regard as a mere by-end may have been prominent in the minds of those who caused our first plea rolls to be penned. All litigation brought profit to the King. The plea roll told his officers of fines and amercements and directed them in their quest for money. Therefore we need not search for reasons why the work that is done by the King's Court should be set in writing. Probably in the last years of Henry II.'s reign,[1] certainly in the early years of Richard I.'s, plea rolls were being officially made and officially preserved.

French historians are willing to admit that in this matter the Court of the King of England, or rather of the Duke of Normandy, set an example which was followed by the Court of the King of France.[2] A French historian has lately, and in well-chosen words, taught his fellow-countrymen what is the essential difference between our records and our reports. Our records are 'destinés en principe à conserver le souvenir des décisions judiciaires pour les appliquer au besoin *inter partes*;' in our reports, on the other hand, 'on relève dans les affaires traitées devant les tribunaux les points de nature à préciser la jurisprudence.'[3] The object of the record is a decent finality: 'interest reipublicae ut sit finis litium.' The object of the report from the very first is science, jurisprudence, the advancement of learning.

Whether the advancement of learning or the formulation of the Court's jurisprudence counted for anything in the counsels of those who set the plea rolls agoing must be very doubtful. After a while, however, when such rolls were beginning to accumulate, it must have become evident that there were upon them valuable precedents. On the other hand, it must have become evident that these same rolls would bear enormous masses of dreary 'common form' in which no judge, no lawyer, no student of the law would find any profit, since all was trite routine. It is of the very essence of a series of records that it shall omit nothing because it is dull and commonplace. Directly

[1] Select Pleas of the Crown (Seld. Soc.), p. viii.

[2] Luchaire, Manuel des institutions, p. 568: 'l'usage des rouleaux d'arrêts, d'origine anglo-normande.' Esmein, Histoire du droit français, p. 742: 'L'usage nouveau paraît avoir commencé par la Normandie, sous l'influence des pratiques anglaises.'

[3] Brissaud, Manuel d'histoire du droit français, i. 250, 300.

to consult the ever growing bulk of parchment in the hope of finding a legal principle or an applicable precedent was vain. Moreover, it was important that these conclusive records should be so strictly guarded that even the King's justices would not have unrestrained access to them for the purposes of private study.

Books containing select entries or abstracts might be serviceable. That is what we see at Paris. In 1263 or thereabouts Bracton's contemporary Jean de Montluçon, the 'greffier' of the 'Parlement,' was making such a book. It and its successors became known as 'les Olim,' and apparently the making of such books became part of the greffier's official duty.[1] It is by no means impossible that in England we have one book of a similar character. It contains select entries from the Parliament Rolls of Edward I. and Edward II.; its contents were published by William Ryley in 1661; it still lies in the Record Office.[2] Meanwhile private enterprise had attacked the plea rolls. Whether Henry of Bratton ought to have had rolls in his possession, whether he ought to have drawn lines upon them and scribbled words in their margins, who shall say? But the work was done, and the outcome was a collection of some two thousand entries, excerpted from rolls which ranged over the first four-and-twenty years of Henry III.'s reign. And then some five hundred cases were cited in a treatise.

When this great exploit had been performed it may have seemed for a while that the plea rolls would afford the raw material for English case law. But that was not the destined line of development. These sacred records were to be under lock and key, and in England we see no officer told off to make extracts and abstracts which shall be more useful to justices and serjeants than the unwieldy originals could be. On the other hand, we see something that is very new, new in England, new in the world: the vernacular report of an oral debate.

Were these reports official? That they were has been very generally believed and very dogmatically stated from the seventeenth century onwards. So far as we can see, however, these dogmatic statements have for their source some cautious words of Edmund Plowden. That great lawyer has told us that he began to study law in the thirtieth year of Henry VIII. (1538–9)—just at the time, that is, when the Year Books, having become intermittent, were finally ceasing to flow—and that he had heard tell how in ancient days there were

[1] Brissaud, op. cit. 302. The second volume happened to begin with the words 'Olim homines de Baiona.'

[2] Maitland, Memoranda de Parliamento (Rolls Ser.), pp. ix–xii.

four reporters paid by the King. Plowden is careful not to pledge his own word. He gives us some hearsay about 'ancient times.' We observe that the story which he repeats will be true enough if at any time during the past centuries there were some officially paid reporters. We observe also that the story, whether true or not, is just such as might find currency if in the new age that was opening—those sad years when the light of the common law was flickering—a continuous supply of reporters could no longer be secured.[1]

When many of the Year Books have been edited and many manuscripts have been explored, we shall be better able than we are at present to discuss this question. Meanwhile let us glance at some of the difficulties which should be faced by any one who believes in the official character of our oldest reports. If reporters were appointed by the King, we might expect to find appointments recorded. If reporters were paid by the King, we might expect to find their stipends mentioned on some fiscal roll. It is easy to prove that the King appointed judges and paid them salaries. Again, if the reports were official, we should expect that the originals, or at all events copies of them, would be carefully preserved by officers of the Court, whereas, so far as we are aware, our manuscript Year Books always come to us from private hands. We might contrast the case of the French 'Olim,' religiously guarded from prying eyes by the Parliament of Paris.[2] Moreover, we should expect that the manuscripts deriving from an official source would be very much like each other, whereas, at least amongst those which belong to Edward II.'s time, there is wonderfully little similarity. From different manuscripts we sometimes obtain of one case two reports so unlike that we can hardly believe that they have been developed by

[1] Plowden, Comment., Pref.: 'pur ceo que en auncient temps (sicome iay sur credit oye) ils y auoient quater Reporters del nostre cases del ley, queux fueront homes eslieu et auoyent un annual stipend pur lour travail en ceo pay per le Roy de cest Realme et ils conferront ensemble al feasance et produment de le report.' Bacon, Amendment of the Law, (Spedding, Life and Letters, vol. v. p. 86), is much more positive, but offers no evidence. Coke, Preface to 3 Rep.: 'the Kings of this realm, that is to say, E. 3, H. 4, H. 5, H. 6, E. 4, R. 3, and H. 7, did select and appoint four discreet and learned professors of law to report the judgments and opinions of the reverend Judges.' At Bacon's instance James I. instituted two official reporters, and in his letters patent purported 'to revive and renew an ancient custom:' Foedera, xvii. 27. Blackstone, Comment. i. 71, knows all about it: from the reign of Edward II. to that of Henry VIII. the reports were taken by the prothonotaries at the expense of the Crown and were published annually. We observe that the prothonotaries are now brought into the story. On this see Runnington's remarks in his edition (1820) of Hale's Common Law, p. 198. Another speculation was that 'these four reporters' were 'those who have since been named readers and elected to that office by the respective Inns of Court.' (See marginal note against the passage above cited from Coke.)

[2] Brissaud, op. cit. 304.

transcription from a common original. At any rate, the lawyers who copied Year Books, or employed professional scribes to copy them, exercised in full measure a right of omitting cases and parts of cases. Furthermore, we see a most remarkable contempt for the non-scientific detail of litigation: especially for proper names. These very often are so violently perverted that we seem to have before us much rather the work of a man who jotted down mere initials in court and afterwards tried to expand them than the work of an official who had the faithful plea rolls under his eye. Also for a very long time any explicit citation of cases by judges or counsel is so rare that we might easily be guilty of an anachronism if we thought that what was wanted was 'authority.' We may strongly suspect that what was wanted was instruction, and that these books were made by learners for learners, by apprentices for apprentices. Finally, we seem to see everywhere the outcome of private enterprise. Mixed up with the words attributed to judges and counsel we see notes and comments, criticisms and speculations which a writer who speaks of himself as 'I' (*jeo*) gives us as his own. If all of these be mere accretions, then we must deal with our manuscripts in an heroic style, cutting and carving right and left in pursuance of a preconceived theory. And if, on the other hand, all or the bulk of these be the work of an officer royally appointed for work of this kind, let us at least perceive how extremely honourable is the duty confided to him by King and Constitution. Not only may he pick and choose the cases that shall be precedents; not only may he sift the *dicta* that should be remembered from those that should be speedily forgotten; but he may frankly criticize and even blame the doings of the King's judges. In the presence of such an officer even a chief justice might feel small.

Just one example may be given of the many passages that it is difficult to reject from a report and equally difficult to attribute to an official pen. Bereford is chief justice of the Common Pleas: Mutford and Stonor are justices. Stonor has been taking part in a debate with counsel. Then we read this:

> *Mutf.* Some of you have said a great deal that runs counter to what was hitherto accounted law.
>
> *Ber.* Yes! That is very true, and I won't say who they are. (And some people thought that he meant Stonor.)[1]

The chief justice had refused 'to name names,' though perhaps his

[1] '*Mutf.* Les uns de vous unt moult parlé encountre [ceo] qe soleit estre lay. *Berr.* Certes, c'est verité: mès jeo ne die point q'il sount. Et ascuns entendirount q'il dist ceo de Stonore.' (MS. *A*, f. 173.)

glance along the bench was eloquent. Was it then for a public officer to put a dot on the undotted *i*, and to do this by reporting the opinion of 'some people'?

More might be said of this matter; but it will be better said at some future time when, as we may hope, members of the Selden Society will be able to judge for themselves what inferences should be drawn from the existing materials. Meanwhile we may remark that the embryology of the real law report should take account of the imaginary law report, or, in other words, of a little book of precedents for pleaders which was current in the last years of Henry III.'s reign. That book, which still lurks in manuscript, contains a series of counts and defences. These, at all events for the more part, do not rise above the level of 'common form.' The facts on which the count is based are supposed to be of a simple character, and the defence is one of the ordinary straightforward defences. We observe, however, that a little drama is put before us, and that, though the main part of the talking is done by the two pleaders, certain remarks are ascribed to 'the justice.' And then instead of 'the justice' we occasionally see a real name, the name of Sir Roger Thurkelby or Sir Gilbert Preston: two distinguished judges who were Bracton's contemporaries. The sayings and doings ascribed to them are of so rudimentary a kind that we may doubt whether the maker of this book can be properly classified as a law reporter, or whether he is not seeking to infuse a little more life into his work by substituting concrete names for the abstract 'justice.' At any rate, for about a quarter of a century before the year from which we begin to receive real reports, this book containing more or less imaginary reports had been in circulation. An almost imperceptible transition from the invention and collection of precedents for pleaders to the true law report is not impossible, and the spirit of the earliest Year Books will hardly be caught unless we perceive that instruction for pleaders rather than the authoritative fixation of points of substantive law was the primary object of the reporters.[1]

Howbeit, as early as 1285, an ever memorable step was taken.[2]

[1] Under the title 'Brevia Placitata' an edition of this interesting work has been promised by Mr. G. J. Turner, and he has kindly allowed us the privilege of seeing some proof-sheets. In one version of it the first writ is supposed to be dated in 1260. As an example we give the following:—A writ and count for detinue of a charter are set forth. The defendant objects that no 'suit' is produced. 'And then said Sir G. de Preston: Fair friend G., you have charged this man with having retained your charters and you have no suit whereby you can prove this. So this Court awards that W. go quit and G. be in mercy.'

[2] Fitzherbert has a good many cases from 13 Edw. I. (1284–5). It should

Some one was endeavouring to report in the vernacular—that is, in French—the oral debates that he heard in court. In 1293 a fairly continuous stream began to flow. This surely is a memorable event. When duly considered it appears as one of the great events in English history. To-day men are reporting at Edinburgh and Dublin, at Boston and San Francisco, at Quebec and Sydney and Cape Town, at Calcutta and Madras. Their pedigree is unbroken and indisputable. It goes back to some nameless lawyers at Westminster to whom a happy thought had come.

What they desired was not a copy of the chilly record, cut and dried, with its concrete particulars concealing the point of law: the record overladen with the uninteresting names of litigants and oblivious of the interesting names of sages, of justices and serjeants. What they desired was the debate with the life-blood in it: the twists and turns of advocacy, the quip courteous and the countercheck quarrelsome. They wanted to remember what really fell from Bereford, C. J.: his proverbs, his sarcasms: how he emphasised a rule of law by *Noun Dieu!* or *Par Seint Piere!* They wanted to remember how a clever move of Serjeant Herle drove Serjeant Toudeby into an awkward corner, or how Serjeant Passeley invented a new variation on an old defence: and should such a man's name die if the name of Ruy López is to live?

Let us look at a few of the sayings of Bereford, C. J., which are written down, for they illustrate the spirit of the Year Books. It is not enough that we should know that he overruled a plea and ordered a serjeant to plead over. What he said was this: 'We wish to know whether you have anything else to say, for as yet you have done nothing but wrangle and chatter.'[1] One day when he was laying down the law, Westcote interjected a remark. 'Really,' said the great man, 'I am very much obliged to you for your challenge: not for the sake of us who sit on the bench, but for the sake of the young men who are here. Nevertheless, you must plead over.'[2] It is not enough that we should know how he disposed of a case of warranty in which

never be forgotten that Mr. Horwood's volumes in the Rolls Series do not contain by any means the whole of the reports of Edward I.'s reign that can still be recovered.

[1] 'Nous voilloms savoir si vous voillez autre chose dire, qe [= car] ceo qe vous dites n'est qe jangle et riot.' (MS. *M*, f. 163 b.)

[2] 'Jeo vous say grant gree de vostre chalenge et pur les joevens ceinz et nent pur nous qe seoms en baunc. Mès ne mye pur ceo dites outre.' (MS. *M*, f. 29.) The 'joevens' will be the apprentices. On another occasion we see Bereford's care for the instruction of the young. He says: 'Et jeo die une chose pur les jeones qe sont environ,' and then he gives a little lecture on avowry for services. (MS. *R*, f. 44.)

it was argued that in a particular event a man might get an exchange in value and yet hold the land that had been warranted. We must know the proverb into which he packed the sum and substance of the case: 'They would like to have the chicken and the ha'penny as well.'[1] Then listen to a little outburst concerning compurgation. 'Now God forbid that any one should get to his law about a matter of which the country can take cognizance, so that with a dozen or half a dozen ruffians he could swear an honest man out of his goods!'[2] Simon of Paris, alderman of London, went down to his native village and was arrested as a villein. It is not enough for us to know that in Bereford's view a citizen of London might not be safe in returning to the 'villein nest' in which he was born. What he said was this: 'I have heard tell that a man was taken in a brothel and hanged, and if he had stayed at home no ill would have befallen him. So in this case. If he was a free citizen, why did not he remain in the city?'[3] Once more, the chief justice opined that suit of court might be apportioned. It is not enough for us to know this. What he said and we do not translate was this:—

Cum la pucelle dist au vallet qe li demanda si ele fust pucelle 'Assaiet, assaiet, assaiet,' auxi assaiet vous, et, si la seute ne serra aporcioné, mei blamet.'[4] Coke has described the 'great casuists and reporters of cases' as 'certain grave and sad men.'[5] They were not always grave, not always sad.

Now a certain traditional respect for the Year Books may be taken for granted among English lawyers, or at any rate among members of the Selden Society. And yet it may be allowable to doubt whether we realise to the full their unique position in the history of jurisprudence, in the history of civilisation, in the history of mankind. Endeavouring to the best of our ability to take a wide view of human affairs, let us make a few challenges or ask a few questions on behalf of our Year Books.

Are they not the earliest reports, systematic reports, continuous reports, of oral debate? What has the whole world to put by their side? In 1500, in 1400, in 1300, English lawyers were systematically

[1] 'Il vodreient volunters avoir la gelyne et la mayle.' (MS. *M*, f. 26.)

[2] 'Ja Deu ne voille q'il deyve a sa ley avenir de chose dount pays put avoir conisaunce, q'il deive par vj. ribauz ou par xij. forjurer le prodhome soun chatel.' (MS. *P*, f. 28.) The *ja* is the Latin *jam*, which still lives in *déjà*.

[3] 'Jeo ai oi dire qe un homme fust pris a la bordel et fust pendu, et s'il ust demorré a l'ostel il n'ust eu nul mal etc. Ausint de cest part. S'il ust esté franc cetezeyn, pur quay ne ust il demorré en la cité?' See *inf.* p. 12.

[4] MS. *R*, f. 44.

[5] Fourth Inst. 4.

reporting what of interest was said in court. Who else in Europe was trying to do the like—to get down on paper or parchment the shifting argument, the retort, the quip, the expletive? Can we, for example, hear what was really said in the momentous councils of the Church, what was really said at Constance or Basel, as we can hear what was really said at Westminster long years before the beginning of 'the conciliar age'? Suppose that our German cousins had law reports like ours, would not these *Jahrbücher* loom mighty big, not merely in the universal history of law, but in *Culturgeschichte*, the history of civilisation and civilising processes?

These Year Books come to us from the middle age, but are not written in Latin: they are written in French. Badish French it may be: 'un français colonial, avarié, prononcé les dents serrées, avec une contorsion de gosier, à la mode, non de Paris, mais de Stratford-atte-Bowe.'[1] But is not the very rudeness of the French that we find in these legal manuscripts—and rude it looks even when placed beside Gower's French poetry or Bozon's moral tales—a quality which its best judges would not willingly miss? Is it not a guarantee of genuineness? No one has tried to polish and prune, or to make what is written better than what was heard. We fancy that learned men who explore the history of the French of Paris would sacrifice many a *chanson de geste* for a few reports of conversation that were as true to nature, as true to sound, as are our Year Books.

Law, however, is the great matter, and without much fear of contradiction we may affirm that, if to the whole mass of materials for the history of law England had nothing to contribute but these Year Books, England's contribution would still be of inestimable value. A stage in the history of jurisprudence is here pictured for us, photographed for us, in minute detail. The parallel stage in the history of Roman law is represented, and can only be represented, by ingenious guesswork: acute and cautious it may be, but it is guesswork still. Our 'formulary system' as it stood and worked in the fourteenth century might be known so thoroughly that a modern lawyer who had studied it might give sound advice, even upon points of practice, to a hypothetical client. We can bring the tissue of ancient law under the microscope; the intimate processes of nutrition, assimilation, elimination can be recorded year by year. Often have we been told to seek in Roman law the clues that will guide us through the English maze. It is high time that the converse and complementary doctrine were preached, and it is safe to prophesy

[1] Taine, Histoire de la littérature anglaise, i. 103.

that some day a great expositor of Roman legal history will express his profound gratitude to the English Year Books.

No doubt it is a highly technical aspect of the work of the law that is displayed on the face of these reports. We see jurisprudence as art rather than as science: we see it even as a game of skill. These books written by lawyers for lawyers remind us of those which chess-players study. Herle castles unexpectedly; Toudeby sacrifices a bishop for the attack; Passeley's management of his pawns was a joy to all beholders. This is what interests the reporter, and let it be confessed that we, at this distance of time, cannot share his interest to the full. But to call a law, or a statement of law, or a book of law 'highly technical' is surely no condemnation. Legal skill, like other forms of skill, may be abused or misapplied, but in itself high technique is admirable wherever and whenever it is seen. And all this high technique, this mastery of technical phrase and technical thought, has its place in the history of the English people, as some day some English Ihering may explain to us. The qualities that saved English law when the day of trial came in the Tudor age were not vulgar common sense and the reflexion of the layman's unanalyzed instincts: rather they were strict logic and high technique, rooted in the Inns of Court, rooted in the Year Books, rooted in the centuries. There is little enough of crude common sense in Coke upon Littleton. What, so we take it, was distinctive of English law at the end of the middle age was the elaboration of rough native material into a highly technical, but at the same time durable, scheme of terms and concepts. That towering edifice, the law of 'estates,' was a characteristic product. Nowadays its ruins cumber the ground, and, when historians draw pictures of it, we do not think it altogether admirable. We would have had it simpler, severer, chaster, less decorated, less flamboyant; but it was a wonderful and even a graceful feat of mental architecture, of lawyerly constructiveness. English lawyers have been too modest about the part played by their science and their art in the making of the English nation.

But have we not in these ancient reports too much logic and too little life? On the contrary, we should claim on behalf of the Year Books that, when we consider that they were written by medieval lawyers for medieval lawyers, they show us a marvellous deal of the play of those moral and economic forces of which legal logic is the instrument, and often, if we may so say, the reluctant instrument. Our old lawyers were fond of declaring that 'the law will suffer a mischief rather than an inconvenience,' by which they meant that it

will suffer a practical hardship rather than an inconsistency or logical flaw.[1] But it is an excellent feature of these Year Books that the unsuccessful argument is as well represented as the successful. We are forcibly told where the 'mischief' lies, where the shoe pinches, even when we are also told that the nonconformist foot that will not fit a shoe is a bad foot and should be pinched. And then, as we compare case with case, we see that more commodious shoes are made for growing feet: logic yields to life, protesting all the while that it is only becoming more logical. In formal records or lawyers' treatises that struggle can hardly appear; but we may often see it in these reports. For example, Bereford C. J. more than once lets it be known that in his view good faith is on the side of the party who must be defeated. Once he said to the Bishop of Hereford: 'It is a dishonest thing for an honourable man to demand what his predecessor has released;'[2] but the bishop's demand was upheld. Once in the name of good faith he urged the defendant's counsel to admit a fact that had not been proved. Back came the retort: 'You must not allow conscience to prevent your doing law.'[3] Remarks of this kind we would not miss, and many we obtain.

Let us place for a moment beside our Year Books the Decisiones Dominorum de Rota: 'reports,' we might call them, of cases decided by the most august court in Christendom, the papal court at Avignon.[4] Perhaps the fourteenth century produced no book so comparable with our Year Books. 'Reports' we might call these 'decisiones;' but the modern English lawyer would compare them rather to 'headnotes.' Long headnotes they would be, and of a somewhat argumentative kind, briefly referring to the authorities *pro* and *contra*, and giving in abstract terms the legal upshot of the decision. No doubt, by expert hands this smoothly flowing jurisprudence of the papal tribunal might be brought to bear on that history of morals which is the innermost history of mankind; but the surface is very smooth, and the reader of our Year Books will miss those retorts, those impromptu replies, those *obiter dicta*, which flash light down into deep recesses and allow us to see the battle for right as a battle.

[1] Already before Coke's day a change in the usage of the word *inconvenience* obscured the meaning of this maxim, and therefore it could be glossed by the introduction of the words *private* and *public*.

[2] '*Berr.* Deshoneste chose est a prudhomme demander chose qe son predecessour ad relessé.' (MS. *R*, f. 19.)

[3] 'Il ne covient pas qe vous lessez pur conscience qe vous ne facez ley.' (MS. *M*, f. 167).

[4] Dominorum de Rota Decisiones, Novae, Antiquae et Antiquiores, Aug. Taur. 1579. See Schulte, Geschichte der Quellen des canonischen Rechts, ii. 69.

Our commendation of the Year Books will not really be qualified by the remark, perhaps needless, that reports must be read in considerable quantities if they are to be appreciated. They cannot be tasted in sips. Placed in the hands of a foreigner or of a beginner, what could be worse material than the last number of the Law Reports? It is of necessity a jumble of odds and ends. The newest dodge of the company promoter for the evasion of the newest statute jostles some piece of hoary erudition. Even so it is in the Year Books. When many are edited as Mr. Pike has edited a few, no student of English history will dare to neglect them. Indeed it will some day seem a wonderful thing that men once thought that they could write the history of medieval England without using the Year Books.

As to the claims of that sort of history which will ultimately be won from our English law reports, ancient and modern, there is no need to say a word in these pages. We would not burn daylight. But we will allow ourselves the pleasure of copying a few sentences from Mr. Justice Holmes and a few from M. Albert Sorel.

> 'When I think thus of the law, I see a princess mightier than she who once wrought at Bayeux, eternally weaving into her web dim figures of the ever-lengthening past,—figures too dim to be noticed by the idle, too symbolic to be interpreted except by her pupils, but to the discerning eye disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life.'[1]
>
> 'C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer. La loi naît du conflit des passions humaines, et nous l'enseignons à des hommes qui la retrouveront, tout animée de ces conflits, dans les études de notaire, dans les études d'avoué, dans les tribunaux. Elle nous vient de la vie, elle retourne à la vie, ne la desséchons pas au passage.'[2]

These Year Books are a precious heritage. They come to us from life. Some day they will return to life once more at the touch of some great historian. Meanwhile English-speaking lawyers are the trustees, and mankind is *cestui que trust.* 'Ne craignons point de le dire et de le montrer.'

[1] O. W. Holmes, Speeches, Boston, 1900, p. 18.

[2] Sorel, Nouveaux essais d'histoire et de critique, Paris, 1898, p. 64.

II. Of the printed Year Books of Edward II.

To say much of the old editions of the Year Books seems unnecessary. Those who have attempted to read them will know how bad, how incorrigibly bad, they are; and those who have studied Mr. Pike's work[1] will know that something better, something infinitely better, can be put in their stead. We say infinitely better, for the difference between sense and nonsense is not measurable, and of mere, sheer nonsense those old black-letter books are but too full.

This at all events is true of the book that is sometimes known as 'Maynard's Edward II.' The Year Books of Edward II. were not printed until 1678. The volume that was then produced bears on its title-page two assertions concerning the learned Maynard. In the first place the reports of Edward II.'s day, together with some Exchequer Memoranda of Edward I.'s, were published 'according to the ancient manuscripts now remaining in the hands of Sir John Maynard.' Secondly, the 'table of matters' was hi work.

The publishers' preface tells us that this book had been 'much and long desired by the most learned of the gown;' also that in the recent case of *Sacheverell* v. *Frogatt*, Chief Justice Hale, 'that great oracle of the law . . . did direct and refer to this book as an authority that might govern the point in question and most worthy to be published.' There follows an allowance of the book signed by 'Finch C.,' 'Will. Scroggs,' 'Fra. North,' and nine other judges, who 'recommend the same to all students of the law.' Hale, we remember, died in 1676, and in June 1678, when the *imprimatur* was given, William Scroggs was just supplanting Richard Rainsford as chief justice of England. A generation of 'old book lawyers,' men who had 'commonplaced' medieval manuscripts, was passing away, as we may learn from the lively pages of Roger North.

John Maynard was by this time seventy-five years old. Vigorous he was. Ten years were yet to pass before he would salute the Deliverer, tell how he had 'nearly outlived the laws themselves,' make a famous speech in a revolutionary convention, and become a custodian of the great seal. Still his advanced age and lucrative practice would make it improbable that he did more for the volume than its title-page asserts. He lent a manuscript and furnished a 'table of matters.' That table—though even it is infamously printed—is the best part of the book. In modern terms we might describe

[1] See especially the introduction to 17 Edward III.

it as a fairly full digest, and, even if it did not bear Maynard's name, we should see that it was the work of one who had diligently read the medieval books and had practised the art of 'commonplacing.' Now that Maynard did not make this table as an index to the printed book seems certain. Among the Maynard MSS. at Lincoln's Inn there still exists what to all appearance is the original of that table.[1] The contents of this commonplace book, so far as we have examined them, closely agree with the printed table, but whereas the references in the printed table are references to the pages of the printed book, the references in the manuscript are references to years and *placita*. Take for example the last entry. The manuscript gives:

> Wrecke. Roy port trans' [= trespass] et dft justefy pur wrecke 14 Ed. 2. 18.

The print gives:

> Wrecke. Roy port trespass et deft. justify pur wreck, Pasch. et Trin. 4 E. 2. 435.

The latter of these entries is derived (though not without the misprint of 4 for 14) from the former, but the reference to page 435 of the printed book has been substituted for the reference to *placitum* 18. The connexion between the printed table and Maynard's MS. seems to be placed beyond all doubt by the following curious fact, which will illustrate the carelessness with which the publishers of 1678 did their work. Maynard apparently intended to comprise in a single commonplace book the notable matters contained in two different volumes. One of these was a manuscript Year Book of Edward II., the other was Keilway's 'Henry VII.,' which was first printed in 1602: two books, it will be observed, which belong to very different ages. So at the beginning of his notebook Maynard or his clerk wrote:

> Tabula Annorum Edwardi Secundi Regis &c. secundum vetus manuscriptum inde Necnon Relation' de Annis H. 7[i] secundum Keilway.[2]

Will it be believed that this title, including the mention of Keilway and Henry VII., stands in bold type at the head of the printed table? At present it seems to us by no means improbable that Maynard had

[1] Maynard MSS. No. 27. See Hunter's Catalogue of Lincoln's Inn MSS., p. 108.

[2] As a matter of fact we have not observed in the body of the Maynard MS. any reference to Keilway's reports.

'commonplaced' the Year Book of Edward II. ten, twenty, thirty years before he placed his notes in the hands that were capable of this astonishing and servile blunder. The references to the pages of the printed book could be supplied by any lawyer of moderate intelligence, if not by every bookseller's hack. The publishers, if they could, would certainly have alleged that the volume which they were giving to the world was edited or revised or supervised by this eminent man, the King's serjeant, the leader of the English bar, the most learned of living lawyers. They made no such boast.

Of the nameless editor, or rather copyist, whom they employed we will say no hard words. We do not know how few months were allowed him for a task that demanded years; we do not know how small was his recompense; we do not know what opportunity he had of consulting any manuscripts beyond the one that belonged to Maynard. It is not of the producer but of the product that we speak, and we must call it bad: very bad.[1]

It is not well that such charges should be made unless proof of their truth be given. On the other hand, it is of importance that there should be frank speaking about this matter, for otherwise we shall allow these booksellers of the seventeenth century to put off upon us whatever they please, and we shall continue to read *mumpsimus* when *sumpsimus* might be had for the asking. Therefore we will take as a fair specimen the first ten cases in the book, and we will make the assertion that in six or seven out of the ten there is nonsense enough, *mumpsimus* enough, to prevent a modern reader from apprehending the point of the report. We will go somewhat beyond this, for we have heard the opinion that, though these old books contain many misprints, still an intelligent man, or at all events an expert, can correct these errors by conjecture, and that a reputable translation might be published without the labour and cost that a new French text would involve. That opinion we cannot share.[2] We are writing for a learned Society, and we will ask its members to follow us through these ten cases and to decide for themselves

[1] As to the printing of Maynard's table one specimen may suffice. We see *Heresy* as a conspicuous title. The cases under it concern the law of inheritance. This mistake may be seen in the MS. at Lincoln's Inn. A commonplacer plots out his book with a scheme of probably useful headings, beginning with *Abatement*, ending with *Wreck*, and including *Heresy*. Some cases about heritage are carelessly deposited under *Heresy*. The printer prints what he sees and no one corrects him.

[2] It will be understood that we are not speaking of the later Year Books, which were printed at a comparatively early time. We shall rejoice in learning that the printed texts of them are good enough to serve as the basis of an English translation.

whether they could have made by conjecture all or many of those amendments which some knowledge of the manuscripts enables us to make.

Case 1. The first entry happens to be no report but a copy of a Latin record. As a defence to a writ of formedon the tenant pleads a recovery by judgment upon a verdict given in a writ of right brought by Robert of Tattershall against one Gilbert. The demandants are now to reply. Will the reader endeavour to construe their replication ?

> . . . bene concedunt quod judicium redditu[m] coram prefatis iusticiariis itinerantibus pro predicto Roberto de Tadeshale de predicto manerio super veredicto jurate patrie que ibidem inter eos capta fuit sup[er] ex[ceptione] non tenetur inde per ipsum Gilbertum allegat[a] in predicto brevi de recto, sed dicunt quod per hoc excludi non debent . . .

Now the right way of dealing with this passage is to strike out *non tenetur*, to put *nontenure* (a genitive) in its place, and then to write *fuit* after *redditum*.

This is hardly an obvious solution of the difficulty, and, had it been suggested by way of conjectural emendation, many would have said that it was hazardous. To this we must add that the whole legal point of the case lies in the fact that in this writ of right the judgment had been founded, not upon the then demandant's better title, but upon a verdict which merely disproved the tenant's plea of nontenure (*super exceptione nontenure*) ; and yet our only chance of knowing this fact is the chance of our seeing that *nontenure* is the right reading.

Case 2. This is another Latin record. An assize is brought against a prioress for a chamber and corody in the priory. She pleads a special plea, and we can dimly see that it is based on the fact that the plaintiff produces no speciality. But we ought not to be content with dim vision. We must look at the words :—

> . . . nec aliquid facti special[is] de ipsa priorissa aut predecessorum suorum seu alicujus alterius tituli per quod loquitur obstare possit cur[ie] quod actio liberi tenementi eis in predicta camera et corrodio accrevit in hac parte ostendit . . .

Is it too much to say that this is pure nonsense ? What are we to do with that *loquitur* ? We must change it into *liquere* and then we must omit *obstare* altogether.[1]

[1] Perhaps some clerk hesitated between *liquere* and the almost equivalent *constare*, and insufficiently obliterated the latter.

We pass to the statement of the judgment:

> Et M. et E. requis[iti] si factum speciale habeant vel proferunt nec alium titulum ostendunt, ideo concessum est quod Priorissa eat sine die.

How many minutes will it take the reader of these words to see that *vel* ought to be *nihil*? The plaintiffs, being asked whether they have any specialty, produce nothing and show no other title, and therefore it is awarded that the defendant prioress go without day.

Case 3. We now come to some French: to a little more than five lines of French; and we will not say but that it could be construed by one who had some acquaintance with the tricks and manners of the printed Year Books. A demandant recovered seisin of land, but before he sued a writ of execution the King died, 'p[ar] quei le d[eman]dant apres L'ansiwit le Scire Fac[ias].' What to do with *ansiwit?* Search the pages of Littré and Godefroy? That would be idle. We must chop the word in two: 'apres l'an siwit le scire facias.' Such simple feats we shall have to perform frequently and ruthlessly. But can we believe that any one pretended to correct the proof-sheets of this volume?

Case 4. We must face the following bit of argument:

> West. A ceo nai jeo mester qar nous avoins usee la fyne comme barre de la quele il avoit oye et sour ceo isserene demperler et ore ne ount rien respond', mes vicint nous chacer a respondre a lour title . . .

As a preliminary step, we of course change *isserene* into *isserent*, and perhaps we can hardly hope for *issirent*. Then we make some little way;—'We have no need to do that, for we have put forward the fine by way of bar, and of that fine they had a hearing and thereupon went out to imparl, and now they have answered nothing.' Further progress, however, is impeded by *vicint*. That, it need hardly be said, is no word; but we doubt whether there are many men in this country or even in France who will at once hit upon the word or words that should take its place. What we learn from the manuscripts is that we must write either *bient* or *en bieaunt*, using either the present indicative or the gerund of a verb which means 'to wish, intend, endeavour,' and which in Anglo-French appears as *bier*.[1] This done,

[1] Old French *béer*; Modern French *bayer*, to gape, and hence (in Old French) to desire. Apparently the form current in England was *bier*. In the Year Books *vous biez* is not very uncommon, and we see the substantive *biaunce*. Diez, s. v. *badare*, suggests an onomatopœic origin: *ba!* issues from the open mouth of a yawning man.

we may proceed: 'and now they answer nothing except by way of endeavouring to drive us to answer to their title.'[1]

We go on a little way and see 'desicome la fyne ne se nest point.' Here the conjectural emendator will not go wrong, for he will long ago have learnt the rule that in the printed Year Books no *n* is to be read as *n* until it has been turned upside down, in order that we may see whether *u* or *v* will look better. So without more ado, *nest* becomes *vest*. Three lines will not elapse before this canon and another must be put in force. 'It seems,' says counsel, 'that, even if he wished to answer to this, la court nel resteineroit pas.' If we stand the *n* upon its head and remember that *t* and *c* are interchangeable, then we shall see *resceiveroit*.[2] Before we have got to the end of the case we shall have made two other serious changes. In 'de pire condition de serroins nous' we shall have substituted a *ne* for the second *de*. In 'la fyne se leva son breve de garr[antie] de ch[art]re' *son* will give place to *sur* or *sour*. Then, looking back a little way, we see the word *doyne*. We are going to see it dozens of times throughout the book. Is it a not impossible Anglo-French subjunctive from *doner* (to give)? No; countless instances compel us to say that the editor did not know that the present subjunctive of *devoir* was *doive* or *deive*. He did not recognise that common word, the equivalent of the Latin *debeat*, when it stared him in the face. Another indication of his mastery of the French language is given by his habit of turning every *eu* into *en*. Really it seems doubtful whether he knew the passive participle of *avoir*.

We will step aside to notice another blunder that is typical and runs right through the volume. A reader of it would be fully convinced that there was on the bench a judge, and a very important judge, called 'Herin,' and well might wonder why he cannot from other sources learn anything about this distinguished man. His name was not 'Herin' but Stanton, Hervey of Stanton, and he was a very real person: 'fundator noster,' as they say at Trinity, a Chief Justice of both Benches, a Chancellor of the Exchequer. Why the reporters habitually called him by his Christian name we do not know, but the fact that *Herui* and *Staunt.* are all one might easily be proved by a comparison of manuscripts. Now to read *Herui* as *Herin* is almost always possible, and probably we ourselves shall misread a good many names before we have done.

[1] Or 'they answer nothing, but desire to drive us etc.'

[2] The insertion of an *s* in *resceivre* (M.F. *recevoir*) was common.

Still here is an unfortunate mistake which permeates the whole book.[1]

Case 5. In an action of replevin the defendant avowed upon one H., a stranger: 'le quel H. fuist oui contra et se joint al pleint.' Is it not wonderful that this man should be 'heard to the contrary' (whatever that may mean) and should then join himself to the plaint or (more correctly) to the plaintiff? Has the reader the courage to dismiss *oui contra* and insert *en court*? If without warrant in the manuscripts an editor suggested this change, would he not excite some contemptuous remarks about 'the higher criticism'?

Case 6. In an action for assault and imprisonment the defendant alleges that the plaintiff is his villein. And thrice over we are told that the plaintiff was arrested 'en soun mẽ.' The whole legal core of the case lies in that difficult and apparently unfinished word. It should be *nie* (for *ni*). The *ni* can be read as *m*, especially if you have first turned the dot or jot on the *i* into a tittle over the *e*. The plaintiff was born in the defendant's villeinage, and though he had since been sheriff of London, he had returned to his native home and been arrested 'en soun nie,' in his villein nest.[2] A whole case is spoilt for us by a twice repeated blunder. After this it were needless to notice that *restreinera* must become *resceivera*.

Case 7. A little note not five lines long tells us how a fine was being levied in favour of a prioress, how a jury was summoned to say whether the Statute of Mortmain was being evaded, and how that jury found that the prioress's right accrued forty years before the statute 'et qil nyavoit nule fraud puis qe la fyne se leva.' But the fine had not yet been levied, and whether it would be levied depended upon the verdict. We must put a full stop after *fraud* and strike out *qe*: 'Afterwards the fine was levied.'

Case 8. If the reader at once sees that *avientisement* must be *anientisement* (M. F. *anéantissement*), and if he is willing to turn *contein* into *continue* and to read that word as *continué*, and if for *aperir*, which should mean 'to open,' he substitutes *empeyrer*, which means 'to impair,' he may understand this case or as much of it as can be understood without reference to the corresponding record.

Case 9. We have to translate the following phrase: 'Nous

[1] Occasionally Trikingham J. appears as 'Lambert.' In MS. Harl. 835, f. 16 d, a remark is attributed to 'Hervy le Hasty,' and this seems to refer to Stanton.

[2] O.F. *ni*; M.F. *nid*. Of the Anglo-French superfluous *e* we shall speak below. The *d* in M.F. *nid* was introduced by latinisers.

sumes teniz par la resom[ounce] en mesme lestat q[e] nous fumes avaunt la mort le Roy.' We shall translate it thus: 'We are here by the resummons in the same estate as that in which we were before the King's death.' This we do because we happen to know that *teniz* (though it looks like a bad participle from *tenir*) is really the good word *ceinz*. Possibly we ought to guess that *t* is *c*, and *ni* is *in*. But it takes longer to make good guesses than to look at a few manuscripts.

The tenth case, which does not fill eight lines, we will pass without remark. And here we will bring our fault-finding to an end. It is not a pleasant task, and it is the less pleasant when undertaken by one who is painfully conscious that his own text is by no means such as should be demanded from an editor working in the twentieth century, when model editions of medieval books are plentiful, when the Old French language and the English variety thereof have been scientifically investigated, when the plea rolls are easily accessible, when at the British Museum he can have four or five manuscripts on the table before him, when he can have manuscripts or photographs of manuscripts in his own house, even in the Hesperides. For the moment, however, we are endeavouring, not to commend or excuse our own doings, but to show that the existing printed text of the Year Books of Edward II. is too bad to be understood, and therefore too bad to be tolerated. It is no matter for boasting, and to boast is far from our mind, but we do say that with imperfect method and inadequate exploration and defective knowledge we have substituted some sense for some nonsense in about three cases out of every five.

But these old books, it may be said, served the Cokes and the Hales and the Maynards: might they not serve us? No, our answer must be, they cannot serve us, just because we are not Cokes or Hales or Maynards. Men who were steeped in the old learning of the real actions could put up with very slipshod texts. They had earned the right to guess. They knew what the book ought to say, and therefore must be taken to have said. Even if they could not suggest exactly the right form of distorted words, they could infer the upshot of a phrase from the general trend of the argument. We are no longer in their position. Few, if any, of us have earned the right to guess what a medieval law report ought to say. To this it must be added that the particular text that is now before us did not serve the Cokes and the Hales and the Maynards. It comes to us from a time when Coke and Hale were dead, and the venerable Maynard was in all

probability almost the only living man who was entitled to emend the printed Year Books by conjecture.[1]

It must further be observed that the manuscript which belonged to Maynard was not an eminently good specimen of its kind. It can easily be identified. After passing through the hands of Sir G. P. Turner and Sir T. Phillipps, it has lately been purchased by the British Museum. The name of 'John Maynard' is written in it, and at the end we may see the following words: '28° August 1676. I doe as much as in me lyeth allow the printing of this booke. Ri. Raynesford.'[2] What we ourselves have seen would incline us to say that the book in which Chief Justice Raynsford thus wrote his name was the only manuscript that the editor used, and in a recently published catalogue a member of the staff of the British Museum has stated that it was 'the sole basis' of the edition.[3] On p. 18 of the printed volume the reader may see some blank spaces. They correspond to a stain in Maynard's manuscript. The editor did not go elsewhere to find the words that the stain concealed.

The publishers, in their preface, speak of what had lately been said by Hale in the case of *Sacheverell* v. *Frogatt*. In that case the chief justice referred to a manuscript in the library of Lincoln's Inn and caused it to be inspected. In his posthumous History of the Common Law, he said that of the 'many' copies of the reports of Edward II.'s reign that were 'abroad' the best that he knew was in the same library.[4] The honourable society possesses two manuscripts, both of which to all seeming belonged to it in Hale's day, and one of them is in all probability the subject of his commendation.[5] The publishers do not say that any use was made of it, and we have seen no proof that it influenced the printed text. Then they refer to something that Selden had said in his dissertation on Fleta.

> And it may be observed from what Mr. Selden doth Cite in his learned Dissertations on Fleta, that there is some small variety in the

[1] Roger North, Lives of the Norths, 1826, i. 28: 'I do not know that his lordship [Guildford] had read over in course all the year books; but I verily believe he had dispatched the greatest part. . . . It was not moroseness but reason that induced his lordship to deal so much as he did with the year books; and however, at present, that sort of reading is obsolete and despised, I guess there will not be found a truly learned, judicious, common lawyer without it.' A great change was taking place just at this time.

[2] The printed volume seems to have been ready in June 1678. It looks as if the whole work of copying and printing was done in less than two years.

[3] Catalogue of Additions to the Library in the years 1894–9, p. 150.

[4] History of the Common Law, ed. 6, p. 198.

[5] These two volumes are No. 137 (2) and No. 139. See Hunter's Catalogue of the Lincoln's Inn MSS., pp. 138–140. The latter is our MS. *D*.

> Copies; But, with this, that what is wanting in some Copies, and particularly in this, is no part of the Original piece; but hath been added by the later Transcribers.

If by this these enterprising traders meant that Selden had singled out for praise the copy that they were going to employ, they made too free with an honoured name, and as to what they call the 'small variety in the copies,' those are not the words that we should have chosen. The variances are large and important.[1]

Of this matter we hope to speak at a future time. One reason for postponing it is that we have not yet come upon the track of a certain manuscript of singular interest which Selden saw at the Inner Temple. It contained some romanising glosses; and also, so Selden thought, it named one Richard of Winchedon as the author of the reports. That it has not perished we may yet hope, though it is no longer to be found at the Inner Temple. But we have seen enough to say that no one manuscript can be a sufficient foundation on which to build a text of these Year Books, and that Maynard's copy can often be corrected out of other volumes. Indeed we owe it to our predecessor to add that some of those blunders that we have chosen as examples were not originally of his making; they are plainly to be seen in the manuscript that he used. Even had he been a more competent copyist than he was, his text would not have been what nowadays we want and have a right to demand.

The variations between the manuscripts that we have seen extend far beyond matters of spelling and grammar, and far beyond those careless omissions and repetitions which naturally occur in the process of transcription. Often we may infer that the report of a case has been deliberately shortened by the extrusion of what seemed to be immaterial particulars and the condensation of the argument. Sometimes of one and the same case we see two reports that are so unlike each other that, unless we are to regard them as originally in-

[1] The case of *Sacheverell* v. *Frogatt* was argued in 1671. It is reported in 2 Saund 367; 2 Lev. 13; T. Raym. 213; 1 Vent. 148, 161; 2 Keb. 798, 819, 833, 839. We take the following passage from Saunders, p. 371. '*Hale* chief justice said to *Coleman* at the bar, that it is mentioned in the end of *Richmond* v. *Butcher* [Cro. Eliz. 217] that a written book was shewn to the judges in 12 Edw. 2, on which they relied; and he said that there was a fair manuscript of all the years of *Edward* the Second in *Lincoln's Inn* Library, and desired him to search it to see if he could find any such case, for he thought that it was a mistake. . . . And afterwards Coleman informed the court that he had searched the said book of Edward 2, but did not find any such case there.' It need hardly be said that in Hale's mouth 'fair' was not depreciatory. The Fairfax MS. (No. 139) at Lincoln's Inn is handsome and well written.

dependent, we must believe that a transcriber has assumed a liberal power of improving his materials by inserting links of reasoning and expanding the debate. Lastly, we shall see in one manuscript whole cases that are not to be found in others. We can make no precise estimate, but, as at present advised, it seems to us that a new text may be fully one-third longer than 'Maynard's Edward the Second.' There is, for example, a long report of a Kentish eyre that has never yet been printed: it would fill one of our volumes. Some of the most interesting cases in the second year of the reign have never yet seen the light. In some other instances we shall give two reports of the same case, in order that the reader may compare them. Whether the two are thoroughly independent, or whether both descend by different routes from some very full report that we have not seen, is a question about which we can as yet give no decided opinion.

Mr. Pike has shown by precept and example that the plea rolls and the Year Books can and must be brought to bear upon each other.[1] The step that he took in 1885 will hereafter be regarded as an important advance in the study of English history. And the further we go back, the truer it becomes that for modern readers the report imperatively needs whatever light can be thrown upon it by the record. We hardly like to say that these ancient reports of oral debate are marvellously incorrect, for the true marvel is that we have such reports at all; but still we must say that the reporter is only to be trusted in so far as he is representing what he takes to be the instructive legal upshot of a discussion. That point is in the focus of his camera; all that lies around is blurred and distorted. The carelessness, for example, which is displayed in the transmission of proper names would be almost incredible were it not that the names of men and places are so absolutely indifferent to those who want not facts but law.[2] This, it may be said by the way, makes the hunt for cases in the voluminous rolls a tedious and sometimes a fruitless pursuit. A necessary pursuit it would be even if we only hoped to recover what a contemporary lawyer might fairly treat as legally immaterial particulars. A lady, for example, said that her husband

[1] See in particular his valuable article in Harvard Law Review, vii. p. 266: An Action at Law in the Reign of Edward III.: the Report and the Record.

[2] A good instance is the change of Hugh de Beauchamp into Hugh de Grandpount. We should have thought this an almost impossible feat of perversion; but in a third manuscript we found Hugh de Brampton, which looks like one of the missing links. So Kyme becomes Hoine and then Holme; Cobham becomes Cotingham and then Dodingham; Payforer becomes Pyncoun; Merton becomes Buckland; Guisborough becomes Walsingham.

had died at some town 'in the sea of Greece.' Very naturally the reporter and the copyists did not care to preserve with any accuracy the name of that town—it might be 'Ypota' or it might be 'Spoca'—and very naturally they did not care to preserve the husband's name. But when the record tells us that his name was Sir John Maundeville we begin to think that after all there may have been a Sir John Maundeville who travelled eastward and so provided some slight basis of fact for a wonderful superstructure.[1] But it is not of names only that the reporters are careless. Up to their eyes in current practice, they could take for granted much that is unknown to the most studious of modern students. Just what they omit, or blur, or huddle up in an 'etc.,' and just what we want to know, the record often tells us, and the struggle to get something on to the record first becomes intelligible when we see the result on the roll of the court. To this we may add that, so far as we can at present judge, the reporters did not always know what actually went on to the record. It is an open question whether in the fourteenth century the prothonotary or other clerk made up the record in court while the oral debate was still proceeding. If so, his ability to turn French into Latin on the spur of the moment and without the help of minutes or foul copies must have been remarkable, for his Latin sentences are often long and are stuffed with parenthetical clauses. But not unfrequently the pleadings in their final and recorded form are hardly such as the report has led us to expect. Therefore we want both the report and, whenever we can get it, a fairly full note of the record. In many instances we (to speak for ourselves) should have misinterpreted the report if the record had not been found, and we hope that future volumes will contain more notes from the record than we are able to give in this our first experiment.

What we want is a new and a worthy edition of the Year Books undertaken as a national enterprise. We want a dozen men trained or in training to do the work: trained, if need be, at Paris under masters of the old French language: trained, if need be, at Harvard under masters of the old English law. It will cost money. It may fill a hundred, perhaps two hundred volumes. But we must have it, or England, Selden's England, will stand disgraced among the

[1] See below, pp. 21–3. Our thanks are due to various friends, especially to Prof. Bury, for suggestions as to the name of the town 'en la mere de Grez.' Such is the corruption in our manuscripts of plain English names that we are not hopeful of solving the problem. It will be observed also that the Lady Robergia de Maundeville, who said that Sir John was dead, said also, and said falsely, that she was not professed in religion.

nations. The tide of conquest is advancing. The Anglo-Saxon laws are already German property. The Anglo-Norman law-books have been rediscovered—the word is not too strong—by Dr. Liebermann. A society that bears the name, not of Selden, but of Savigny finds the money and finds the brains. A French librarian shows us how a Year Book should be read.[1] As monuments of Germanic law, they will look well, these English Year Books, among the 'Monumenta Germaniae.' As monuments of a French dialect, they will look well, these English Year Books, among the 'Documents inédits sur l'histoire de France.' Lo! they turn unto the gentiles.

Meanwhile it is not much that can be done by a not very numerous Society which must not devote its modest resources to only one kind of work and cannot command the whole time of editors. It is little enough that is being done on the present occasion; improvement will come, we hope, with experience.

III. Of the Anglo-French Language in the early Year Books.

About the manuscripts and the plea rolls, about the relation borne by the reported debate to the recorded pleadings, about the judges and counsel who are to come before us, there are divers things that an editor might wish to say; but on the present occasion preference will be given to a few remarks on the language in which these early Year Books are written. As we have been allowed to retain in our own keeping for a considerable time three manuscript volumes which display the handiwork of some dozen clerks of the fourteenth century, observations of an empirical kind have been accumulating in the course of our task, and the publication of some of them, though they cannot pretend to phonological or grammatical science, may perhaps ease the labour of other students and transcribers.[2]

We know 'law French' in its last days, in the age that lies between the Restoration and the Revolution, as a debased jargon. Lawyers still wrote it; lawyers still pronounced or pretended to pronounce it. Not only was it the language in which the moots were holden at the Inns of Court until those ancient exercises ceased, but it might sometimes be heard in the courts of law, more especially if some belated real action made its way thither. The pleadings, which

[1] See Maurice Prou, Manuel de Paléographie, 1896, planche 4.

[2] The manuscripts referred to are the Cambridge MSS. *A*, *M*, *R*. See below, p. xci.

had been put into Latin for the record, were also put into French in order that they might be 'mumbled' by a serjeant to the judges, who, however, were not bound to listen to his mumblings, since they could see what was written in 'the paper books.'[1] What is more, there still were men living who thought about law in this queer slang—for a slang it had become. Roger North has told us that such was the case of his brother Francis. If the Lord Keeper was writing hurriedly or only for himself, he wrote in French. 'Really,' said Roger, 'the Law is scarcely expressible properly in English.' A legal proposition couched in the vulgar language looked to his eyes 'very uncouth.' So young gentlemen were adjured to despise translations and read Littleton's *Tenures* in the original.[2]

Roger North was no pedant; but he was a Tory, and not only was the admission of English to the sacred plea rolls one of those exploits of the sour faction that had been undone by a joyous monarchy, but there was a not unreasonable belief current in royalist circles that the old French law-books enshrined many a goodly prerogative, and that the specious learning of the parliamentarians might be encountered by deeper and honester research. Nevertheless, that is a remarkable sentence coming from one who lived on until 1734: 'Really the Law is scarcely expressible properly in English.'

Had it been written some centuries earlier it would have been very true, and its truth would have evaporated very slowly. The Act of 1362, which tried to substitute 'la lange du paiis' for 'la lange francais, qest trope desconue' as the oral language of the courts, is an important historical landmark.[3] But we know that it was tardily

[1] Roger North, Lives of the Norths, 1826, i. 30: 'But now the pleadings are all delated in paper . . . and when causes which they call real come on and require counting and pleading at the bar, it is done for form and unintelligibly; and, whatever the serjeant mumbles, it is the paper book that is the text.'

[2] Lives of the Norths, i. 33: 'The ready use of law French came easily to him because he well understood the vernacular [= French of Paris]: and he had acquired such a dexterity in writing it with the ordinary abbreviations, that he seldom wrote hastily in any other dialect: for, to say truth, barbarous as it is thought to be, it is concise, aptly abbreviated, and significative. . . . When he had time and place to write at his ease he usually wrote English, and accordingly drew up his reports.' Roger North, A Discourse on the Study of the Laws, 1824, p. 13: 'For really the Law is scarcely expressible properly in English, and, when it is done, it must be *Françoise*, or very uncouth. All moots and exercises, nay, many practices of the law, must be in French, at the bar of the courts of justice; as when Assizes or Appeals are arraigned, the Array, that is, Pannels of Juries challenged or excepted to, it must be done in French; so Counts, Bars, and such transactions as reach no farther than the Bench and Counsel, with the Officers, and not to the Country . . . are to be done in Law French.'

[3] 36 Edw. III. stat. 1, c. 15 (Commissioners' edition). Observe *francais*, not *francaise*. Having written *trop*, the scribe puts a tittle over the *p*, which seems to show that he meant *trope*.

obeyed, and indeed it attempted the impossible. How tardy the obedience was we cannot precisely tell, for the history of this matter is involved with the insufficiently explored history of written pleadings. Apparently French remained the language of 'pleadings' properly so called, while English became the language of that 'argument' which was slowly differentiated from out of the mixed process of arguing and pleading which is represented to us by the Year Books. Fortescue's words about this matter are well known.[1] In 1549 Archbishop Cranmer, contending with the rebels of Devonshire over the propriety of using English speech in the services of the Church, said, 'I have heard suitors murmur at the bar because their attornies pleaded their causes in the French tongue which they understood not.'[2] In Henry VIII.'s day, when the advocates of a reception of Roman law could denounce 'thys barbarouse tong and Old French, whych now seruyth to no purpose else,' moderate reformers of the Inns of Court were urging as the true remedy that students should be taught to plead in good French: the sort of French, we may suppose, that John Palsgrave, 'natyf de Londres et gradué de Paris,' was teaching.[3] No doubt they felt with Roger North that 'really the Law is scarcely expressible properly in English.'

The law was not expressible properly in English until the 'lange du paiis' had appropriated to itself scores of French words; we may go near to saying that it had to borrow a word corresponding to almost every legal concept that had as yet been fashioned. Time was when the Englishman who in his English talk used such a word as 'ancestor' or 'heir,' such a word as 'descend,' 'revert,' or 'remain,' must have felt that he was levying an enforced loan. For a while the charge of speaking a barbarous jargon would fall rather upon those who were making countless English words by the simple method of stealing than upon those whose French, though it might be of a colonial type, had taken next to nothing from the vulgar tongue. Very gradually the relation between the two languages

The word *tittle* is useful. Thereby we mean 'a small line drawn over an abridged word, to supply letters wanting' (Cotgrave). It is the Spanish *tilde*, which we see, *e.g.*, in *doña*.

[1] Fortescue de Laudibus, c. 48: 'mos ille vigore cuiusdam statuti quam plurimum restrictus est: tamen in toto hucusque aboleri non potuit, tum propter terminos quosdam quos plus proprie placitantes in Gallico quam in Anglico exprimunt, tum quia declarationes super brevia originalia tam convenienter ad naturam brevium illorum pronuntiari nequeunt ut in Gallico, sub quali sermone declarationum huiusmodi formulae addiscuntur.'

[2] Cranmer, Remains (Parker Soc.), p. 170.

[3] Maitland, English Law and the Renaissance, pp. 43, 72.

was reversed. An Act of Parliament could do little to hasten the process; more might be done by patriotic schoolmasters.

When the history of English law is contrasted with the history of its next of kin, the existence of law French is too often forgotten. It is forgotten that during the later middle age English lawyers enjoyed the inestimable advantage of being able to make a technical language. And a highly technical language they made. To take one example, let us think for a moment of 'an heir in tail rebutted from his formedon by a lineal warranty with descended assets.' Precise ideas are here expressed in precise terms, every one of which is French: the geometer or the chemist could hardly wish for terms that are more exact or less liable to have their edges worn away by the vulgar. Good came of this and evil. Let us dwell for a moment on an important consequence. We have known it put by a learned foreigner as a paradox that in the critical sixteenth century the national system of jurisprudence which showed the stoutest nationalism was a system that was hardly expressible in the national language. But is there a paradox here? English law was tough and impervious to foreign influence because it was highly technical, and it was highly technical because English lawyers had been able to make a vocabulary, to define their concepts, to think sharply as the man of science thinks. It would not be a popular doctrine that the Englishry of English law was secured by 'la lange francais qest trope desconue;' but does it not seem likely that if English law had been more homely, more *volksthümlich*, Romanism would have swept the board in England as it swept the board in Germany?

But we must turn to these manuscripts of the fourteenth century, and we will notice in the first place that the language in which they are written is in a certain sense quite pure French. We doubt whether these three volumes contain twenty English words. We may see *socage* (which had been fashioned on French lines and was probably regarded as wholly French[1]) and we may see *gavelkind*. We may see *hundred* and *alderman*; but these names for officers and districts appear much as *préfet* and *arrondissement* might appear in a modern Englishman's account of modern France. We have seen but one case in which a would-be French verb is made out of English material: that verb is the common *utlager* or *utlaer*, 'to outlaw,' which on the Latin roll will be represented by *utlagare*. From the

[1] Bracton, f. 77 b: 'Et dici poterit sockagium a socko, et inde tenentes qui tenent in sockagio sockemanni dici poterunt, eo quod deputati sunt, ut videtur, tantummodo ad culturam.'

first the Normans seem to have been glad of this excellent word, and the French *forbannir* could not prevail against it.

Now, as regards vocabulary, there is a striking contrast between the earliest and the latest Year Books. A single case of Henry VIII.'s day shows us 'deer, hound, otters, foxes, fowl, tame, thrush, keeper, hunting.' We see that already the reporter was short of French words which would denote common objects of the country and gentlemanly sport. What is yet more remarkable, he admits 'owner.'[1] But in Edward II.'s day the educated Englishman was far more likely to introduce French words into his English than English words into his French. The English lawyer's French vocabulary was pure and sufficiently copious. It is fairly certain that by this time his 'cradle speech' was English; but he had not been taught English, and he had been taught French, the language of good society. Even as a little boy he had been taught his 'moun et ma, toun et ta, soun et sa.'[2] Of our reporters we may be far more certain that they could rapidly write French of a sort than that they had ever written an English sentence. John of Cornwall and Richard Penkrich had yet to labour in the grammar schools.

Let us look for a moment at some of the words which 'lay in the mouths' of our serjeants and judges: words descriptive of logical and argumentative processes: words that in course of time would be heard far outside the courts of law. We see 'to allege, to aver, to assert, to affirm, to avow, to suppose, to surmise (*surmettre*), to certify, to maintain, to doubt, to deny, to except (*excepcioner*), to demur, to determine, to reply, to traverse, to join issue, to try, to examine, to prove.' We see 'a debate, a reason, a premiss, a conclusion, a distinction, an affirmative, a negative, a maxim, a suggestion.' We see 'repugnant, contrariant, discordant.' We see 'impertinent' and 'inconvenient' in their good old senses. We even see 'sophistry.' Our French-speaking, French-thinking lawyers were the main agents in the distribution of all this verbal and intellectual wealth. While as yet there was little science and no popular science, the lawyer mediated between the abstract Latin logic of the schoolmen and the concrete needs and homely talk of gross, unschooled mankind. Law was the point where life and logic met.

And the lawyer was liberally exercising his right to make terms of

[1] Y. B. 12 Hen. VIII. f. 3 (Trin. pl. 3); Pollock, First Book of Jurisprudence, 281.

[2] See the treatise of Walter of Biblesworth in Wright, Vocabularies, i. 144: 'Quaunt le enfès ad tel age Ke il seet entendre langage, Primes en fraunceys ly devez dire Coment soun cors doyt descrivere, Pur le ordre aver de moun et ma, Toun et ta, soun et sa.'

art, and yet, if we mistake not, he did this in a manner sufficiently sanctioned by the genius of the language. Old French allowed a free conversion of infinitives into substantives. Some of the commonest nouns in the modern language have been infinitives: *diner, déjeuner, souper, pouvoir, devoir, plaisir*; and in the list whence we take these examples we see *un manoir* and *un plaidoyer*. English legal language contains many words that were thus made: 'a voucher, an ouster, a disclaimer, an interpleader, a demurrer, a cesser, an estover, a merger, a remitter, a render, a tender, an attainder, a joinder, a rejoinder,' though in some cases the process has been obscured by that attractive power of the first conjugation which must be noticed hereafter. Were we still 'to pray oyer of a bond,' we should use a debased infinitive, and perhaps it is well that nowadays we seldom hear of 'a possibility of reverter' lest a pedant might say that *revertir* were better. Even the Latin roll felt this French influence: 'his voucher' is *vocare suum*, and *recuperare suum* is 'his recovery.'

But the most interesting specimen in our legal vocabulary of a French infinitive is 'remainder.' In Edward II.'s day name and thing were coming to the forefront of legal practice. The name was in the making. When he was distinguishing the three writs of formedon (or better of *forme de doun*) it was common for the lawyer to slip into Latin and to say *en le descendere, en le reverti, en le remanere*. But the French infinitives also were being used, and *le remeindre* (the 'to remain,' the 'to stay out' instead of the reversion or coming back) was soon to be a well-known substantive. It was not confused with a *remenaunt*, a remnant, a part which remains when part is gone. What remained, what stayed out instead of coming back, was the land.[1] In French translations of such deeds as create remainders it is about as common to see the Latin *remanere* rendered by *demorer* as to see an employment of *remeindre*, and it is little more than an accident that we do not call a remainder a demurrer and a demurrer a remainder. In both cases there is a 'to abide;' in the one the land abides for the remainder-man (*celui a qi le remeindre se tailla*); in the other case the pleaders express their intention of dwelling upon what they have said, of abiding by what they have pleaded, and they abide the judgment of the court. When a cause 'stands over,' as we say, our ancestors would say in Latin that it remains, and in French that it demurs (*loquela remanet: la parole demoert*): 'the parol demurs,' the case is 'made a *remanet*.' The differentiation and speci-

[1] Pollock and Maitland, Hist. Engl. Law, ii. 21; Challis, Law of Real Property ed. 2, p. 69.

fication of 'remain' and 'demur,' 'remainder' and 'demurrer,' is an instance of good technical work.

Over another exploit, the formation of substantives ending in *-ee*, the grammarian might shake his head. In these manuscripts we only see the beginning of the process, and as yet it very rarely exceeds unquestionably legitimate bounds. The person who is feoffed is *le feffé* or, since graphic accents are not in use, *le feffee*; the person who is vouched is *le vouché*; the person who is presented to a church is *le presenté*. These three terms are common, and they merely illustrate the use of the past participle as a substantive. Only twice have we noted anything less defensible. We have seen *le lessé* standing for a man who was not leased but to whom a lease was made: in a word, for a 'lessee.' A man to whom a conusance was made once appears as *le conissé*; he could hardly have been *le conu*. For the rest, 'donee, grantee, mortgagee,' and the like were still in the future: men had to say *celui a qi le doun fut fait* or *le doun se fist*. It is strange at a later day to observe the man who undertakes an English trust becoming a trustee under the influence of a French past participle: stranger yet that our obligee should be just the person who is not *obligé*. But languages must grow or die: and, since Beaumanoir was a critic of our Anglo-French, let us remark that in his usage, if *le detté* is always our debtor, *le detteur* may be sometimes the debtor and sometimes the creditor.[1]

We might dwell at some length on the healthy processes which were determining the sense of words. There is, for example, *tailler* (to cut or carve), which can be used of the action of one who shapes or, as we say, 'limits' a gift in some special manner, but more especially if the result of his cutting and carving is a 'tailed fee.' There is *assez* (enough) with a strange destiny before it, since it is to engender a singular 'asset.' We might endeavour to explain how, under the influence of the deponent verbs *sequi* and *prosequi* which appear upon the Latin roll, the phrase *il fut nounsuivy* (he was nonsuited) is a nearer equivalent for *il ne suivit pas* than for *il ne fut pas suivi*. Of our lawyers as word-makers, phrase-makers, thought-makers, much might be said.

But we will look at the manuscripts yet more closely. To look

[1] See Salmon's edition of the Coutumes de Beauvaisis, ii. 512. Words in *-our* (*-or*, *-ur*) could be freely made; but it might be difficult to distinguish those that are the work of English lawyers. Besides *dettour*, *donour*, and *creaunceour*, we have observed *feffour*, *lessour*, *conisour*, *deforceour*, *diseisour*, and *tollour*. Instead of *termor*, however, we see *termer*, which is made on the same lines as *fermer* or *fermier*.

at them closely an editor is compelled, for unfortunately he has not merely to copy what is written but to supply what is not written, and the task is by no means so easy as the expansion of Latin script. In some of the little tracts designed to teach medieval Englishmen how French should be written we may see the excellent rule that, while Latin words may be abbreviated, French words must be written at full length.[1] But to this counsel of perfection our law reporters paid no heed. Indeed in its last days 'law French' owed such vitality as it had to the fact that it was supposed to be 'aptly abbreviated' by signs which no one had any need to expand. In the fourteenth century some of the stenographic symbols were carefully distinguished. Though the only letter that is visible be *p*, there ought to be no difficulty in choosing between *pas*, *par*, *pour*, and *puis*. Even in this case we have more choice than we have when we are transcribing Latin. We may be put to an election between *par-* and *per-*, between *pour* and *por* and *pur*, between *puis* and *pus* (L. *post*). But the indiscriminating dash or 'tittle' was freely employed. Many of the common words of the law were hardly ever finished. All parts of the verb *demander* may be represented by *dd'*, all parts of the verb *voucher* by *vouch'*, all parts of the verb that means 'to warrant' by *gar'*, and this same syllable may indicate the warrantor and the warranty. But the worst sinner is the letter *r* with a 'tittle' above it. This may stand for any part of the verb *respondre*, for the substantive *respons* or *response*, for the substantive *reson* [M.F. *raison*], for any part of the verb that means 'to receive,' especially for the participle *receu*, and occasionally but less commonly for parts of the verb that means 'to recover.' Only the context will tell us what to write, and, as we shall see hereafter, the conjugation of some common verbs—for example, that which means 'to recover'—is none too easy. It is plain that often enough the editor of the old printed book has made a wrong choice between *exception*, *examination*, and *execution*: he had nothing to guide him but a context that he did not understand.

The habit of abbreviating words in order to save precious parchment led to mistakes even at an early time. We will mention what we take to be an instructive example. A clerk of the fourteenth century was already writing in numerous cases such words as *bestuz* (beasts), *frerus* (brothers), *Jamus* (James), *esposailus* (espousals),

[1] Orthographia Gallica, ed. Stürzinger, 1884, p. 16: 'et sachez qe Fraunceis ne serra pas escript si courtement come Latyn, qar Fraunceis demande paroules entiers.'

Kaunturburus (Canterbury), *il memus* (he himself), *vous estuz*, *estus* (you are), *vous ne le deditus pas* (you do not deny it). The explanation of these forms is, we take it, that some one expanded into *-us* that closed loop (9) which in Latin script almost invariably indicates *-us*, but which in Anglo-French script, as sufficient examples seem to show, will often stand for *-es* or *-ms* or simply for *-s*. Possibly the 'obscurity' of the second vowel in *bestes*, *freres*, *estes*, *dites* had a little to do with the matter; but this man does not write *bestu* or *freru* for 'a beast' or 'a brother,' and the misexpansion of a compendium seems the correct explanation of his vagaries. In other respects he is a slovenly scribe. It is painfully evident that the work of copying these books was sometimes undertaken by men who were capable of bad blunders and who put little thought into their task. Generally speaking we may say that the French of even the best copies stands on a perceptibly lower level than that which is attained by the carefully written statute roll.[1]

Whether this Anglo-French was being pronounced in different ways it is not for us to say. That it was being spelt in many different ways is certain. The influence of Paris—the fact that Parisian French had become good French, standard French—disturbed the development of an Anglo-French language which, had it been left to itself, might have pursued a more regular course. Let us cite a few words from one who writes with authority:—

La langue transportée sur le sol anglais par les conquérants normands subissait sur bien des points un développement particulier. L'analogie

[1] Stimming, Boeve de Haumtone, p. 184, treats *donamus* (1 plur. preter. ind.) and the like as real and phonetically explicable forms, though he admits that he has only seen them in compendio. We have seen large numbers of such words in compendio, if the loop must be read as *-us*; but then when these words appear at full length they end in *-es*. We may indeed see *sumus* at full length. But is not this a latinism? These legal clerks have to write Latin and French, and sometimes a mixture of Latin and French; and so the abbreviated word that would be expanded into *sumus* were it Latin may appear as *sumus* in French also. A beautiful photographic facsimile of a page of a MS. Year Book (3 Edw. III.) is given by M. Maurice Prou in his Manuel de Paléographie, 1896, planche 4; and the learned editor adds a printed version of the text which is a model of accuracy. We observe that he holds himself free to read as 'no*us* vo*us* dio*uns*' three words in each of which the letter *o* is followed by the loop. But he reads as 'no*us* tro*vamus*' what we should have read as 'no*us* tro*vames*.' We venture to submit that if the loop may mean not *-us* but *-uns*, it may well stand for *-ms* or for *-es*; and when the words are written in full it is *dioms* and *trovames* that we find. If the loop must mean *-us*, then *puus* was a very common representative of the word that in M. Fr. is *puis*, and Englishmen must have habitually said *nous* and *vous*, not only when they meant 'we' and 'you,' but when they meant 'our' and 'your.' From these conclusions we shrink. We must admit, however, that it would be very unusual to find the loop at the end of *bestes*, *freres*, etc.

engendrait sans cesse des formes nouvelles que le français de France ne connaissait pas. A ces formes, les écrivains nés en Angleterre en ajoutaient d'autres qu'ils puisaient dans la lecture des livres venus de France. De là résultaient des variétés et des inconséquences qui affectent en des proportions diverses la langue de chaque écrivain, et qui s'opposent à ce qu'on puisse traiter l'anglo-normand comme un dialecte régulier.[1]

And again :

Ce ne fut pas impunément que le français pénétra dans les classes inférieures d'une population accoutumée aux sons et aux formes d'un idiome tout différent. La langue qui s'était conservée dans un état de pureté relative jusqu'aux premières années d'Henri III. dégénère rapidement avant le milieu du xiii[e] siècle. Il ne semble pas qu'elle soit partout aussi uniforme que le dit Ranulph Higden . . . elle offre au contraire dans sa corruption une variété assez grande. Ce qui est vrai, c'est que les différences linguistiques qu'on observe d'un texte à un autre ne semblent pas correspondre, en général du moins, à des régions déterminées, mais dépendent du plus ou moins d'instruction des auteurs ou des copistes.[2]

No word was so short that it could not be spelt in at least two ways. The little word that means 'and' might be *et* or *e*; the little word that comes from the Latin *apud* and means 'with' might be *o*, *ov*, *ove* (written *ou*, *oue*), *of*, *od*, *oed*; the little word that in Modern French is *qui* might be *ki*, *ky*, *qi*, *qy*, *qui*.[3] The following eight versions of the word that became our 'suit' were found in three reports of one short case: *siwte*, *siwete*, *sywte*, *suwite*, *suwte*, *sute*, *swte*, *seute*. The number of ways in which at various times *seigneur* could be represented must have been very large, for, to say nothing of the vowels, we may find in the centre of the word a simple *n* or *gn* or *ng* or *ngn*. We were on the point of saying that its termination (Lat. *-orem*), though it might be *-or* or *-ur* or the common *-our*, would not be *-eur*, when we found *seigneur* persistently written by a clerk whose work in other respects seemed to betray some continental influence.[4]

Consistency is not to be expected. In the space of seventeen words one and the same hand writes *curt*, *court*, *curt*, *court*, to represent the Latin *curtem* and the modern *cour*. In a single line a man puts *frere*, *peir*, *meir*; but these are soon followed by *friere*, *piere*, *miere*. If we see *estoit* or *serroit* we shall soon see *esteit* or

[1] Paul Meyer in Romania, xii. 201.

[2] Paul Meyer, Nicole Bozon, p. lvii. The passage in Higden's Polychronicon (Rolls Ser. ii. 158–160) is well known: the English language is variously pronounced, 'cum tamen Normanica lingua quae adventitia est, univoca maneat penes cunctos.'

[3] In our three manuscripts the *k*, once very popular in England, is no longer usual, but may be found.

[4] MS. *B* at the British Museum.

serreit. A *mestre de la mesoun* straightway becomes a *maistre de la maisoun.* One and the same hand writes *tient* and *teint* (L. *tenet*), *tiegne* and *teigne* (L. *teneat*), *tiel* and *teil* (L. *talem*), as if the order of the two vowels were of no importance. That he has just written *beofs* (L. *boves*) is no reason why a man should not at once write *boefs*. Apparently the copyist of a manuscript did not hold himself bound to follow his exemplar in what he considered to be mere matters of taste. He perhaps leant towards *avant, son baron, que, avoit, puis, poeple, entier, jamais, pre* (L. *pratum*); the book that lay before him gave *avaunt, soun baroun, qe, aveit, pus, people, enter, james, pree*; the result was a bewildering mixture. Every clerk has some distinctive trick. We may mention, since this has influenced the Vulgate text, that the scribe of Maynard's manuscript commonly wrote *fuist* instead of *fut* and *dil* instead of *del.* The spelling of Anglo-French in the fourteenth century was probably less variegated than was the spelling of English in the days of Henry VIII.; but it was variegated enough.

This, it must be confessed, would make the expansion of abbreviated forms a perilous undertaking even for a scholar who was equipped with all the arms of linguistic science. He might have fully persuaded himself that a certain clerk wrote *mester* (M.F. *métier*) and *enter*, and then he would come upon *mestier* and *entier* or perhaps on *mestir* or *enteir* or *entire*.[1] It is only at a roughly correct result that we or the like of us can aim when jots and tittles must be made into letters. But we have tried to learn some lessons from those who have the right to teach.[2]

Two main peculiarities of Anglo-French script, the *aun* and the *oun*, are strongly represented. The first half of the fourteenth century

[1] We have seen *entire* as a masculine and not once only.

[2] The names of a few books that have been of great service to us may be usefully recorded: A. Darmesteter, Historical French Grammar, trans. Hartog, 1899; A. Brachet and P. Toynbee, Historical Grammar of the French Language, 1896; P. Toynbee, Specimens of Old French, 1892; G. C. Macaulay, Gower's French Works, 1899; Lucy Toulmin Smith et Paul Meyer, Les contes moralisés de Nicole Bozon, Société des anciens textes français, 1889; Paul Meyer, La vie de saint Grégoire par Frère Angier, Romania, xii. 145 ff.; H. Suchier, Ueber die Vie de Seint Auban, 1876; A. Stimming, Der Anglonormannische Boeve de Haumtone, Bibliotheca Normannica, vol. vii., 1876; Paul Meyer, La manière de langage, in the Revue critique for 1870, p. 373 ff. (a conversation-book for Englishmen learning French); E. Stengel, Die ältesten Anleitungsschriften zur Erlernung der französischen Sprache, Zeitschrift für neufranzösische Sprache, i. 1 (this includes the interesting 'Donait françois' of John Barton, a grammar for Englishmen); J. Stürzinger, Orthographia Gallica, in the Altfranzösische Bibliothek, vol. viii. (a tract for Englishmen on spelling and pronunciation); E. Busch, Laut- und Formenlehre der Anglonormannischen Sprache des xiv. Jahrhunderts, Greifswald, 1887.

seems to have been the heyday of these forms. The clerk who is to be our main guide in the present volume was fond of both. Within a few pages he writes *taunt, qaunt, avaunt, devaunt, sauntz, auns* [L. *annos*], *fraunk, hauncestres, saunk, maunderent, demaunde, chaunge, graunt* [M.F. *grand*], *alouaunce, appendaunce.* Indeed we may say of him and of some other clerks that, with rare exceptions, which may be slips, the French *an* always becomes *aun* if it is 'blocked' by another consonant. If the *a* is not 'blocked' but 'free' it remains *a*: *manoir* or *maner* or *manier* (all these forms of our 'manor' were in use) does not become *maunoir.* We may contrast *Johan, Johane, Jordan, Cristiane, Banastre* with *Alisaundre, Stauntone, Maundeville, Caunteloo.* The singular of the word for 'year' is *an*; but its plural is often *aunz.* Then the same clerk writes *sount* (L. *sunt*), *ount* (L. *habent*), *noun* (L. *non*), *noun* (L. *nomen*), *soun* (L. *suum*), *moun* (L. *meum*), *doun* (L. *donum*), *doune* (L. *donat*), *baroun, resoun, mesoun, coroune, Symound, Brabazoun, subgestioun, respoundre, somoundre, encountre,* and, so far as our experience goes, the *oun* is even more widely distributed than the *aun.* Often the abbreviation of the word and the practical identity of the characters used for *u* and *n* must leave us doubting between *aun* and *an,* between *oun* and *on,* but, the further we have gone in our work, the more disposed have we been to insert the *u* in doubtful cases. A schoolmaster of the thirteenth century taught his English pupils to write *an,* but to pronounce it as *aun.*[1] Would that his *aun* had been transmitted to us by the phonograph!

It is not altogether easy for the untrained to catch these usages, and we fear that in our ignorance we may do violence to some delicate phonetic phenomena. For example, it is by no means every *on* that becomes *oun.* Apparently some stress is necessary to induce this change. The scribe whose work we have most carefully observed writes *encountre, countredire, countreesteaunt*; but he writes *contrariouseté, continué, continuaunce.* He writes *resoun*; but he writes *resonable* when he does not write *renable.* He gives us *coroune* but *coron*[*er*]: he gives us *conynges* (rabbits), but *counynger* (rabbit-warren). He or one of his fellows writes *prisoun, enprisoné, enprisounement.* But further, while he writes *fourme de doun* and *il doune* and *il dounent,*[2] he writes *doner, doné, donez* (past part.), *nous donoms, vous donetz, il dona,* just as he writes *il moustre*[3] (L. *monstrat*), but *nous mostroms,* and

[1] Orthographia Gallica, p. 19.

[2] These words can almost always be read as *donne, donnent* if it is desired so to read them, and good modern masters, English and French, have so read them. But would they write *donn* (L. *donum*)?

[3] Here again *monstre* is possible.

il cleyme (L. *clamat*) but *nous clamoms*. All seems to depend upon the tonic accent and the subordinate stresses that it occasions. But apparently there were some established fashions that were proof against this influence. It seems, for example, that the prefix *con* remained unaltered in all parts of the common verb *conustre* and the kindred substantives, so that men wrote *conissour*, *conissaunce*, *reconissaunce*, and the like. Then *persone* (person and parson) seems a constant form.[1] Also we see that when, as is often the case, an *e* is added to the termination of a word which should end in *-ion* (L. *-ionem*) no *u* is inserted, so that we are compelled to regard *intrusione* and *intrusioun* as two alternative forms in common use: *mesone* and *mesoun* are found in close proximity and written by the same hand.[2] The value of this *oun* we suppose to be similar, not to the value of the *oun* in the modern pronunciation of 'noun, round, amount,' but rather to the value of the *oon* in words that we have borrowed in recent times from Romance sources, such as 'balloon, maroon, platoon, macaroon, pantaloon.' Perhaps we may profitably recall 'cantonment' and 'Lord Mahon.' But what our forefathers did in the matter of nasal vowels is none too plain to us. We see, not *boun*, but *bon* as the representative of the Latin *bŏnum*.[3]

Some settled usages there were which were seldom broken. As a good example we may take the words which should represent the Latin *regem* and *legem*. We might expect *rey* and *ley* or *roy* and *loy*. But clerk after clerk will give us *roy* and *ley* (occasionally *lay*), while *rey* has become rare and *loy* is hardly to be seen. 'Le roy est sur la ley:' this is a memorable dictum proceeding from Chief Justice Bereford.[4] But we must turn to grammar.

As regards the declension of nouns, it seems to be a well-attested fact that the French of England hurried rapidly along a path which

But we shall do well to remember the Spaniard's *muestro*, *mostramos*.

[1] Did the stress already fall on the first syllable? To decide between *persone* and *parsone* is very hard; for the second letter is hardly ever written. At any rate there seems to have been no differentiation into two words. We adopt *persone*, but with many doubts.

[2] In the Maynard MS., however, words like *actioune* will be found.

[3] Some experts, when they meet with what can be read either as *-on* with a tittle or as *-ou* with a tittle, prefer to hold that it is the *n*, not the *u*, which is in compendio. We incline to the other view. In transcribing the Cambridge MS. of Gower, which is written in a 'book hand,' Mr. Macaulay saw *n* written and *u* in compendio: and we cannot doubt that this is what stands there: the two characters do not resemble each other as they do in the cursive of the lawyers.

[4] MS. *M.* f. 109: a case of Mich. an. 8, Rex v. Prior of St. John of Jerusalem: 'Berr. Si vous ussez fondement vous deissez bien, mès devers le Roy vous n'avez nul fondement de ley, q'il [= *mod.* car il] est sur la ley.'

the French of France was to tread with slower steps. In our manuscripts the noun has no cases, and the accusative forms are already enjoying their complete victory. The few instances in which a nominatival form has prevailed are just those which are given as examples in modern grammars. We see *fitz*, *fiz*, *filz* for 'son,' and *soer* or *seor*, not *serour*, for 'sister.' So, too, *auncestre* (L. *antecessor*) is a common word, but may designate either the subject or the object of the sentence. In later days men talked in English of an assize of mort d'ancestor; but whenever our scribes give this term in full they give it as *mort dauncestre*. Both *greindre* and *greignour* (L. *grandior*, *grandiorem*) may be found, and *meuldre* (L. *melior*) has been seen as well as *meillour* (L. *meliorem*); but these are no longer two cases; they are alternative forms. The man to whom all eyes were turning when these Year Books were being compiled is likely to remain 'Piers' Gaveston so long as his story is told, unless Gaveston is expelled by Gabaston;[1] but for our scribes *Pieres* may be a *cas régime* as well as a *cas sujet*. It is noticeable that the trace of the declension of *homo* which is still preserved in modern French is hardly to be discovered in their handiwork. They usually employ *home* or *homme* (L. *hominem*) as a nominative even where the Frenchman of to-day would write *on* (L. *homo*) or *l'on*, though *em* and *l'em* are not unknown. Occasionally we may think that we have found a good old form, as when we see *B. est filz H. nez et engendrez*; but our hopes will be dashed by the next phrase: *et pur le filz H. tenu et conu*. We are then inclined to hold that it is rather a blunder than an archaism that we have before us. Mistakes of this kind, the capricious omission or insertion of *s* or *z*, seem to grow commoner as time goes on. They stand thick in the latest of our French statutes. In 1487, for example, we may see, even in this exalted place, such phrases as *le felonie ne serroit pas determinez* and *si ascun home soit tue ou occis ou murdrez*,[2] while *en le parlement tenuz a Westm*[*ouster*] seems to have become a settled formula. It seems possible that men who had long lost all apprehension of the old 'rule of the s' were being misled by dim remembrances or what they thought to be continental examples. But going back to the first statute on the roll, the statute of 1278, we see that already the noun does not decline for case, at all events in the opinion of some clerk who stands high in

[1] 'C'est ainsi que s'appelle et s'écrit aujourd'hui le lieu d'où le favori d'Édouard était originaire (Basses-Pyrénées, canton de Morlaas).' Bémont, in Lavisse et Rambaud, Hist. générale, iii. 371.

[2] Statutes of the Realm, ii. 510. *Le felonie* is exceptionally bad.

the official hierarchy.[1] In a good many instances we may see the plural of an adjective or of a passive participle without *s* or *z*; but before we multiply the number of these cases it may be well to observe the advocate's habit of identifying himself with his client. He will say, 'We are our father's son and heir and are seised,' and here 'Nous sumes seisi' is as defensible as 'Vous êtes bon.'[2]

This being so, the English reader may for a moment be puzzled by a persistent appearance of *il* where he expects *ils*. He will remember, however, that the modern *ils* does not derive from the Latin *illos*—for that by one route had become *eux* and by another *les* —but is a late result of the growing opinion that a plural should be made by the addition of *s* to the singular. But, while *il* as a nominative plural is maintaining its ground, we may already observe the beginnings of that process which prepares the 'indirect object case' of *cist* for coming adventures and world-wide fame. Already *cestui* and *celui*, alternating with *cesti* and *celi*, were being commonly used as nominatives and as both substantival and adjectival pronouns. We may say *Celui J. est le fitz W.*, and *Celui a qi le don se fit survesquit*, and *Si cesti ne fust receu* (If this man were not received), and *Cesti bref ne les put servir*, and even *Cesti Agnes porta son bref*, though most clerks seem to know that *Ceste Agnes* is preferable. It was useless for Master John Barton to teach Englishmen that *cestui* is 'oblique.' They knew better.[3]

Another element of our ineradicable and indeclinable *cestui que trust* may trouble a reader and has troubled an editor. We repeatedly see *que* or *qe* as a nominative (= 'who') where we expect *qui* or *qi*. Still more often we see the letter *q* with a tittle above it and are tempted by the context to write not *que* but *qui*. Apparently, however, the temptation should be resisted, for (1) *que* as a nominative equivalent to our 'who' is frequently written in full, (2) the proper mode of abbreviating *qui* is to write *q* with superscript *i*,[4] and (3) *que* as a weakened

[1] Statutes, i. 45. The Commissioners' edition of the Statutes seems to be little known to linguists. It should be of great value, for a date can be accurately assigned to every document.

[2] Of Gower, Mr. Macaulay says (p. xvii) that he is acquainted with the old rule and 'often shows a preference for observing it, where it is a matter of indifference in other respects. Rhyme, however, is the first consideration, and a great advantage is obtained by the systematic combination of the older and the newer rule.'

[3] In the 'French Donatus' (see above, p. xliii, note 2), p. 30, the grammarian says: 'Cy endroit il fault scavoir que ces mos, *moy*, *toy*, *soy*, *luy*, *cestuy*, *celly*, *icelly*, sont obliques et doivent doncques estre parlez ovecques les seignes des cases et ovecques toutz prepositions fors que avecques cest signe *le*, si come *de moy*, *au moy*.'

[4] This was written before the writer had seen the following rule in the Orthographia Gallica, p. 25: 'Item *qe* conjunccio indifferenter potest scribi q̃ vel *qe*, sed *qi* debet scribi sine titulo

form of the nominative *qui* seems to have been well known in Old French There is another temptation which assails us when we see the *q* with a tittle. We want to turn it into *quar* or *qar*, for evidently it bears the sense of the modern *car* (L. *quare*) and must be translated by 'for' or 'because' or some such word. But often we see this *qe* in full; often we see *qen* or *qil* where we wish to write, but dare not write, *qar en* or *qar il*, and we may regard it as an established fact that in good Old French *qe* or *que* might sometimes be used where *car* is used in Modern French.[1] The reader must be prepared therefore for a *qe* or *que* that is equivalent to *car* and to the *quia* of our Latin records, as well as for a *qe* or *que* that is equivalent to the nominatival *qui*. The *qui* that is the case of the indirect object, the *qui* (formerly *cui*) that is doing the work of the Latin *cuius* and the Latin *cui* (as in the common phrase *qi heir il est*, 'whose heir he is'), does not so readily degenerate into *que*. Our phrase 'to prescribe in a *que* estate' is less justifiable than our *cestui que trust*, since it represents *qi estat il ad*, 'whose [*not* which] estate he has.' Even here we shall occasionally see *qe* in our manuscripts; but apparently, while *qe* for 'who' was good and normal, *qe* for 'whose' or for 'whom' after a preposition was still an error.

A little illustration of this point may be desirable, for we have before us one of the impediments to a rapid reading of the Year Books. Let it be remembered that blunders over *quid* and *quod* (which ought not to be abbreviated in the same way) were such typical blunders that they generated the Frenchman's *quiproquo* and the Spaniard's *quid pro quo*: a very different thing from the *quid pro quo* of the English lawyer. We take two pages written by a clerk who rarely abbreviates *qe* or *qi*. In that space he has twice to use a word corresponding to our 'who.' In each case he uses *qe*: 'Vous avez issi Maude qe est dedeinz age;' 'L'enqueste fust chargé . . . qe vindrent et disoient.'[2] In the same space he has written 'de qi seisine ele demande' (of whose seisin she demands); 'vers qi le bref fust porté;' 'vers qi le recoverer se fist' (against whom the recovery was made); 'en qi le dreit repose;' 'a qi le dreit est.' Then in the same space *qe* has been used four times as an equivalent for L. *quia*, M.F. *car*, E. *for*. We give these instances since the student of the Year Books should accustom himself to this usage.

[= without a tittle] positum interrogative.'

[1] See instances cited by Godefroy, Dict. vi. 494–5.

[2] As frequently happens with such words as *enqueste*, *juree*, and the like, the verb may be in the singular or in the plural.

'Il ad feintement defendu le plai, et ceo piert q'il pout av*oir* abatu le b*ref*.' (He has faintly defended the plea, and this is evident, for he could have abated the writ.)

'Il s*er*reit sanz remedie, qe la ou le dreit remaint (for, whereas the right remains) entierem*en*t en sa p*er*sone, s'il fust outé il ne recov*er*eit si noun la moité.'

'Co*m*mune ley ne les eyde pas ne statut, qe les ten*emenz* ne sont pas en point d'estre perduz.'

'Si home s*er*reit receu en tiel cas, ja ne avendereit home a jug*ement* sur verdist del enqueste, qe q*aun*t l'enqueste est passé jeo frai mo*un* garson mettre avant une tiele chartre.'

In the decadence of Anglo-French the terms *en autre* [or *auter*] *droit* and *pur autre* [or *auter*] *vie* become current, and we know how they haunt our modern books. But if they mean 'in another's right' and 'for another's life' they are too bad to be ascribed to Edward II.'s time. We see *autrui* freely and correctly used. We have also seen *nully*, *chascuny*, and *aucuny*.

At first sight it may seem that Anglo-French, having abandoned 'declension for case,' was far gone towards a rejection of 'declension for gender.' The truer way of stating the matter seems to be that Englishmen were rapidly losing their sense of one of the chief means of distinguishing genders that the French language possessed. They were becoming careless of the final toneless *e*, the so-called '*e* feminine.' That they had not lost the sense of gender, though they were in danger of losing it, is evident if, disregarding instances where the presence or absence of an *e* of this type would be the only sign of difference, we look at the use that is made of such fairly distinct words as *le* and *la*, *mon* and *ma*, *son* and *sa*. At hazard we take fifty consecutive instances from one place, and will take only one in which the noun stands for a person. The result is this :

la eglise, la moyté, sa seisine, soun bref, le terme, soun doun, la fyn, la terre, la rente, le temps, la conissaunce, sa chartre, la voidaunce, soun estat, le cas, soun decès, soun abatement, la garrauntie, la garde, la mayne [the hand], sa desheritaunce, le wast, la reversioun, la cause, le fait, sa nessaunce, le purchatz, sa excepcion, sa eschete, le counté [the county], la mort, soun heritage, le saunk, la nature, soun corps, la partie, le park, la prise, la descente, la bastardye, la juree, le jugement, la chose, mon tittle, la limitacioun, la fourme, la suyte, sa carue, le remedie, la derreine persone [the last parson].

The test, it is true, was not severe ; but the result is not discreditable. And it is worth remark that what keeps these clerks right cannot in all cases be their knowledge of our Record Latin.

They write *la rente* and *la dette*, though the equivalent words on the roll will be *redditus* and *debitum*. But when it comes to the question of the final *e*, then we see varieties of practice, inconsequence, caprice. As regards adjectives we have no great opportunity of observation, for in adjectives the colourless language of the law does not abound. Passive participles, on the other hand, are of necessity very common, and what we see will almost entitle us to say that the passive participle does not 'decline for gender.' It seems to be an established fact that 'the *e* feminine' first became mute when it followed another *e*, so that, for example, no difference was heard between the word which represented *portatum* and that which represented *portatam*. Of some clerks it may be said they never double the *e* at the end of the participle, except in a few instances where they double the *e* without regard for gender. The chief of these instances is the participle of *nestre* or *naistre* (to be born). It will be *nee* in the feminine, but it will be *nee* in the masculine also. The reason for doubling this *e* will be found in the fear that a single *e* in this position will be treated as an '*e* feminine,' and that the word which means 'born' will be confounded with the word which means 'not.' For a similar reason it is common to write *usee*, not *use*, as the participle of *user*. Other clerks will frequently double the *e*, and sometimes they may for a while lead us to suppose that the second *e*, whether pronounced or no, is for them a mark of the feminine gender. Soon, however, we shall have proof to the contrary:—*il fut nee et engendree; le bref fut portee; William le puisnee; a jour que luy fut donee*, or the like.

When the masculine form of the participle ends in *i* or in *u* we might perhaps expect more discrimination. But we hardly find it. Some clerks set their faces against any final *e*:—*la dame est venu*. Others will write *il fut garnie* or *le jugement est rendue*. Even when the last letter of the masculine form of the word ought to be a consonant, we shall often find an *e* wrongly omitted or wrongly inserted, as for example in *un anciene fete* (an ancient deed), and *auncien ley* (ancient law). Men who can be trusted with *le* and *la* are capable of misusing *un* and *une*. When their vagaries culminate in *un feme* and *une home*, we see that the cause of the mischief is not a persuasion that inanimate things are in truth genderless.[1] The same lesson may be taught us by *la fine, la resone, la reversione, la person, son frer, la seore*,

[1] When the reader is shocked by the appearance of *une home*, *un feme*, and the like, he should remember that Frenchmen of this age did not nasalize the *u* of *un*. (Darmesteter, Grammar, p. 161.) So the difference, if any, between *un* and *une* consisted in the absence or presence of a slight second sound.

and *le bref fut bone*. Not unfrequently an editor will find himself compelled to add a final *e* which he would rather not write. If he sees in full the words *record*, *bastard*, *tort*, as substantives meaning a record, a bastard, a wrong, but also sees the little stroke through the final *d* or *t* which should signify an omitted letter, he has no choice open to him, though he may think that some clerks fell into a trick of drawing these little strokes without considering whether they were needful. We have seen *la courte* and *la morte* (the death) written in full, and many another instance of the superfluous *e*. A bad instance occurs when an *e* is tacked to the infinitive of a verb of the first conjugation, and *avowere* (for example) is written instead of *avower*. Worst of all, perhaps, are plurals made with an unnecessary *e* followed by *z*. A clerk who writes *bastarde* for *bastard* may go on to write *bastardez* for *bastarz*. Such exploits were not common, but they were possible.

A difficulty worthy of remark is occasioned by the abbreviation of words which in Modern French end in *-ion*. The writer shows us by a tittle that he is omitting something, but leaves us to choose between *-ioun* and *-ione*. The termination *-ioun* was certainly common, but such forms as *mesone*, *reversione*, *religione* are also to be found. This difficulty extends to English names which nowadays would end in *-ton* or *-don*. As the names of two lawyers in large practice we see 'Roustoun' and 'Hedoun' as well as 'Rouston' and 'Hedon;' but it would be a mistake to decide that in such cases a tittle above the *-ton* or *-don* must represent an omitted *u*, for such forms as 'Caxtone' appear at full length. We can hardly escape the inference that already the English clerk will sometimes write a final *-e*, not in order that it may be pronounced, but in order that, as in Modern English, it may affect the value of the vowel in the preceding syllable.

That in the middle of a word, and more especially before the letter *r*, we should sometimes see and sometimes miss an *e*, was to be expected: *avowerie* and *avowrie* were to all seeming equally legitimate; we may see *chauncelrie* as well as *chauncelerie*. The English scribe is fond of the sort of *e* that is now called 'parasitic;' he writes *recoverer*, not *recouvrer*; he writes *deliverer*, not *delivrer*. This is to be remembered when we are looking at the futures and conditionals of verbs. Such a future as *il abatera* does not imply *abater* as an infinitive or *abaté* as a passive participle; it seems to be a more or less permissible variant of *il abatra*.

As to sound, it seems to be certain that before the year 1300 Englishmen had ceased to pronounce the final *e* in the termination

that is nowadays written as *-ée*. Thenceforward they had upon their hands an *e* that was often written but was mute. From this point outwards a demoralising process seems rapidly to spread, until there are many men who can write and fluently speak French of a sort, but who make light of this letter and make free with this letter. We would fain hear them say a few words. That '*e* semiplene pronunciata' of which their schoolmasters had told them, was it pronounced at all?[1] Did they sound it as at a later time Palsgrave taught his pupils to sound it; did they sound it 'almoste lyke an *o* and very moche in the noose'?[2] The moral Gower, so his accomplished editor says, was guilty of 'a tolerably extensive disregard of gender, adjectives being often used indifferently in the masculine or the feminine form, according to convenience.'[3] On the other hand, subject to certain definite exceptions, he did not write an *e* unless it was to be pronounced and reckoned as a syllable in his mechanically regular verse.[4] Perhaps we ought to believe that the lawyers of Gower's day would naturally have read each of the following lines as a phrase that consisted of eight syllables :—

La loi commune se pourvoit . . .
Si la querelle false soit . . .
Mais riche tort, qui parle bas . , .
Et d'une part la cause prent . . .
En une chose covoitant . . .

But if so, then our manuscripts seem to tell us that what one apprentice said often sounded unlike what would have been said by another, for one of them in writing would render our 'she' by the dissyllabic *ele* and another by the monosyllabic *el*. Perhaps the better inference is that the Anglo-French of ordinary conversation sounded in this respect much more like Modern French than contemporary Frenchmen or English schoolmasters would have wished it to sound. In matters of language the careless, the slovenly, the vulgar, are often the pioneers and ultimately the victors. At any

[1] Orthographia Gallica, p. 3: the *e* which is to be pronounced *semiplene* is illustrated by 'meynte femme est bone.'

[2] Palsgrave, Éclaircissement, p. 4. Thus 'A la tres haulte et excellente majeste des princes' should be read as 'Alatreháutoeeuzsellántomajestédeprínsos;' and 'en la basse fosse' should be read as 'anlabássofósso' (pp. 56–57).

[3] Macaulay, Gower, p. xvi.

[4] As to a final *-e*, the main exception is that *-ée* = *-é*. Thus 'Les apprentis en leur degré' and 'Au commencer sont encharné' rhyme with 'Et lors y pernent la quirée' and 'Car tort qui donne riche fée.' Then there are a few words, such as *come*, *sicome*, *ove* (with), and sometimes *ore*, in which the final *-e* is not counted.

rate, no argument about the meaning of a passage in the Year Books should turn on the presence or absence of a final *e*.

Of another parasite a word should be said. Apparently *s* had become a silent letter not only when it preceded *t*, as in *est* and *estre*, but also when it preceded other consonants, and, this being so, an *s* was often introduced where it could not be justified by pronunciation or by history. We must always be prepared to translate *fust* and *tendist* as if all that we saw were *fut* and *tendit*. Whether *m* with a tittle stands for *meme* or *mesme* it is often hard to say. The *s* in our own 'demesne' is a good instance of a successful intruder.

We may now pass to an examination of the Year Book verb, and, in order that we might expand with an approach to correctness the abbreviated script, we have spent some weeks in the collection of forms that are written at full length. In the following table we place first the two auxiliaries; next a few remains of the verb *ester* (Lat. *stare*) which have not, like *étant* and *été*, become part of the verb *être*; and next the anomalous *aller*. After these follow the other verbs, roughly divided into four classes, which should make their infinitives in (1) *-er*, (2) *-ir*, (3) *-oir*, and (4) *-re* respectively. In the case of verbs in *-er* (the great 'living conjugation') we select only some out of the very numerous examples of forms which appear to have been normal, but give most of the aberrant forms that have come under our eye. For verbs of the three other conjugations we have sought more diligently. As may be supposed, some parts of the verb are commoner than others. Of a second person singular we can give no one example. Our lawyers sometimes called each other by their Christian names—for instance, Toudeby might be addressed as Gilbert—but apparently the familiar *tu* was never heard in court.[1]

[1] Our rude arrangement of the verbs in four classes may do some violence to the language of our ancestors. We place the verb that means 'to receive' in the third class because modern readers will probably look for it there, though apparently *receivre* (L. *recipĕre*), not *recevoir* (*recipēre*), was the common form. We place the verb that means 'to remain' in the fourth class; the usual form was not *remanoir*, but *remeindre*, with the curious perfect *il remist*. The *remuer* which we put in the first class seems to do the duty of *remouvoir*. Having placed in the second class the infinitive *tollir* (L. *tollire*), we place in the same class forms, such as *il toud*, which are connected with the alternative *toudre* (L. *tollĕre*). The verb which means 'to fall' (L. *cadere*) goes into the third class, though whether *cheoir* (M.F. *choir*) was the prevalent infinitive is more than we dare say. In each class the arrangement is alphabetical, but if we find a compound verb (e.g. *avenir*) and the simple verb (*venir*) we place the former after the latter. Among these verbs those that are the least known to the reader will perhaps be *bier* to desire,

Infinitive

Avoir, aver; estre; ester, estier, estere; aler:—(1) acceptier; agister; aider, eider; alaier; aprouwer; averrer, averrir; barrer, barrir; carier; chacer; charger, chargier; chaungier; cier [=scier]; delayer; dereiner; enjoier; escuser; essonier, essoner; eyser, hesser; grever; marier; oster, ostier; pleder; prover; recoverer, recoverir; remuer, remuyer ['to remove']:—(2) assentir, assenter; choiser [=choisir]; *garauntir*; garnir, garner; gisir, giser; issir, issire, isser, hiser; oir, oyer; parfounir; punyser [=punir]; replevir; resortir; seoffrir; servir, server; tollir, toller; venir; avenir; devener; vestir, vestire, vester; devestire:—(3) cheer, chere, cheyr, chier [=M.F. choir]; eschier; comparir; rescevoir, resceyvre; savoir; surseer [=surseoir]; valer [=valoir]:—(4) abatre, abater, abatir; accrestre; attendre; clore; forclore; conustre, conoistre; mesconustre; defendre; descendre; destreindre; destruire; dire; desdire, dedisere; enquere; entendre, entender; eslire; esteindre [L. extendere]; esteindre [L. extinguere]; esturtre; fere, faire, fair; defaire; joyndre; nestre, naistre; nuire, nuier, nuer; pestre; prendre; comprendre; remeindre; rendre; respoundre; somoundre; suffir, suffitre; suyr, suyre, siwer [M.F. suivre]; tender [=tendre]; trere; vendre.

Present Indicative

Jeo ai, ay; soy, su, suy:—(1) cleime; deny; doune; dowe; enfeffe; *grau*nt; lo, lou, loo, loe; lyvere; moustre; ose; plede; port; preof; pos, poos, pose; quide:—(2) tenc, tienk, tiegne [tenir]; vingn [venir]; deveygne [devenir]:—(3) dey, doi, doy [devoir]; pus, puis, puse, pusse [pouvoir]; sey, soy, sai, say [savoir]; vey [voir]; voil, voille [vouloir]:—(4) crei, croy; di, dy; face, faz; mette; prenk [prendre]; tend [tendre].[1]

Il ad; est; esta; va [aler]:—(1) agarde; agree; amounte, amount; avowe; bie; bosoigne; cleime, cleim, cleym; demaunde; demoert, demurt, demert; doune; lie, lye, ly; marie; overe; passet; proeve; recovere; refuse; repoyne ['is repugnant']; savore ['savours']; semble, semle; suppose; testmoigne:—(2) afiert, affert; defaut; gist, git; ist; list [= L. licet]; refiert, refert; sert; tient, tent, teint; meynteint; vient; covient, covent, coveint, covint; souvent; tout:—(3) chet, chiet, cheet, chieste, chaist, chyst[2]; deit, deyt, doit, dut; piert, peirt; appiert; poet, peot, put, peut; seit, seet; vaut; contrevaut; veut, veult, velt, veot, vet; (4) abate; accrest; attret; court; decrest; defent; destreynt; dit; enclost; estent [L. extinguere]; fet, fait, feit; forclose, forclote; met, mette; pend; appent; pleint; prent; comprent; remaynt, remeint; rend; respount; siwt, sue; enseut; sourde; survist; suffit.

louer to advise, *quider* to think, *poser* to put case, *gesir* to lie, *issir* to issue, *choir* to fall, *tollir* or *toudre* to take away. Much that is useful will be found in Stimming, Boeve de Haumtone, p. xxvi. ff.

[1] We have endeavoured not to give any forms as indicative if the grammar left any chance of their being subjunctive.

[2] In all cases the grammar requires a present,

Nous avoms, avoum ; sumes, sumus, sums :—(1) affermoms ; agardomes, agardomps ; agreoms ; allegoms ; botoms ; clamoms ; continuoms ; donoms ; pledoms, pledomps ; prioms ; refussoms ; trovoms ; vouchoms :—(2) enyntissoms [M.F. anéantir] ; tenoms :—(3) devoms, devomes ; pooms, poums, poms ; sachoms ; soloms ; voloms :—(4) conissoms ; dioms ; entendoms, entendomps ; fessoms, feissoms ; pernoms ; plegnoms, pleynoms.

Vous avet, avetz, avez ; estes, estis, estez :—(1) agardetz ; alegget ; biez ; clametz ; donetz ; mostrez, moustrez ; pledet, pledetz ; portet ; quydez ; reposez ; supposet, supposez :—(2) disseisez ; elissez ; garrantez ; tenet, tenetz ; meyntenez ; tolletz :—(3) devet, devetz, devez ; poet, poetz, pooetz :—(4) conussez ; descloez ; dites, ditez, diet, dietz, detis ; entendez ; faites, feistes, fetez ; pernez ; mespernez ; plegnez ; responet ; suetz ; tendet.

Il ount, ont ; sount, sont, sunt :—(1) aident ; avowent ; botent ; clayment, claimont ; dounent ; meynoverent ; mostrent ; parlont ; representent ; resusitent :—(2) afferent ; gisent ; tienent, tenent ; vignent :—(3) cheient ; deivent, deyvent, devent ; pount, poent, poount ; volent, voillent :—(4) conissent, conussent ; compreignent ; descendunt ; dient ; pernent.

Imperfect Indicative.

Jeo avoye, avoy ; estoye, estoy :—(3) soley ; voley.

Il avoit ; ert, estoit :—(2) afferoit :—(3) parcevoit ; poeit, poait ; voleyt, volleit, volait ; saveit, savoit ; soleyt :—(4) appendoit ; conissoit, conusoit.

Nous avioms ; esteioms :—(3) savioms.

Vous aviet, avietz, aviez ; esteiet, esteiez, estoiet.

Il avoient, avoyent ; esteient :—(1) pledeyent :—(3) deveient, devoint ; poiaient, poient ; savoient ; soleient ; voleient :—(4) conisseint, conysoynt ; disoient, dysoent, diseint, disoynt ; fesoient, fesoint, feseint.

Preterite Indicative.

Jeo fu, fuy :—(1) entrai, entra ; *graun*tai :—(4) apris ; conu ; vi, vy.

Il out ; fu, fut, fuit, fust, fuist, feut ; esta, estut ; ala :—(1) agrea ; aliena ; allegea ; anticipa ; assigna ; atorna ; avowa ; bailla ; bota ; bracea ; clama ; commencea ; copa ; counta ; debrusa ; demorra ; dereina ; destourba ; dona ; dowa ; enchacea ; enfeffa ; estraungea ; gaga ; getta [M.F. jeter] ; graunta ; happa ; leva ; maundi [mander] ; naufra ; obliga ; osa, oysa ; passa ; presenta ; pria ; purchacea ; refusa ; reherca, rehercea ; *recovera*, recov*ery*, recoverist ; tailla ; testmoigna ; tewa [tuer] ; voucha :—(2) choisyt ; defaillit ; disseisit ; enlargi ; establi ; faily, failly ; garaunti, guarantist ; guerpi, gerpi ; issit ; lust [L. licere] ; norrist ; oit, oya ; proferi, profri ; resorti, resorty ; tint, tient ; tollit ; vesti ; devesti ; vint ; devynt ; survynt :—(3) ap*ar*ceust ; apparut, apparust, aparuist ; cheut, cheust, chehy, chey ; eschey ; dut, deust ; pout, pust ; receut, receust ; sout ; valust ; vit, vist :—(4) abati, abatist ; accrust ; appendy ; conust, conist ; corust ; defendi ; descendy, descendit, descent ; descloa, desclosa [desclore] ; destreint ; dit, dist ; estent [L. extinguere] ; fit, fist ; forfist ; joynt, joyntesist [joindre] ; mist ; nasquit ; oscit

[occire] ; pleynt ; prit ; remist [remaindre] ; rendy ; requist ; respoundy ; suffit ; suit, siwit, suyist ; ensiwit ; survesquit, survist ; tendy, tendist ; treit [M.F. traire] ; vendi, vendy.

Nous aveimes, aveym*es* ; fumes, feumes, furomes ; estaymes, esteymes, esteimes :—(1) attornams ; botames ; ent*r*ames ; lessams ; oustames ; portam*es* ; presentames ; purchesames ; recov*er*ames, recov*er*imes ; semam*es* ; supposames :—(2) tenyms ; venim*es* :—(3) resceumes, rescums ; veimes [voir] :—(4) abatimes ; deimes [dire] ; deimes [' we gave '] ; descendimes ; feymes, fesseym*es* ; meimes ; preim*es*, p*r*eymes ; rendims ; requeimes, requemes ; suyms.

Vous aveistes ; feutes, fustes ; alates :—(1) baillates ; botastes ; debrusastes ; entrastes, entrates ; gr*a*untastes ; levastes ; maynov*er*astes ; occupastes ; oustates ; priastes ; relessates ; recov*er*astes, r*ecover*ist*es* :—(2) assentistes ; disseisites ; faillites ; isseistes, issitis ; ravistes ; seisites ; soeffrastes [M.F. souffrir] ; venistes ; avenist*es* :—(3) aparustes ; receustes, receutes ; veistes, veyistes :—(4) abatistes ; conuseistes ; deistes, deites ; destreinastes ; faistes ; joinastes ; meistes ; nasquites ; preites, praistes ; requeites ; respondistes ; suistes, sewytes.

Il furent, furont ; alerent :—(1) agarderent ; baillerent ; chauncellerent counterent ; engetterent ; entrerent ; excepcionerent ; leverent ; maunderent ; menerent ; ordinerent ; plederent ; porterent, porterunt ; prierent :—(2) assentirent ; departirent ; enparkirrent ; issirent ; peruerent [M.F. périr] ; ravirent ; r*e*sortir*ent* ; vesterent ; suffrirent ; vindrent, vindront, viendrent, vindreint, vynderent, vindereynt ; tindrent, tiendrent ; detindrent :—(3) apparurent ; eschier*ent* ; r*e*ceustrent ; virent :—(4) abatirent ; arderent ; batirent ; conisserent ; descendirent, descenderent, descendrent ; entendirent, entendirount ; firent, ferent, feserent ; mistrent, misterent ; nasquirent ; pleindrent ; pristerent ; rendirent ; suirent, siwerent.

Future

Jeo averay, avera ; serray :—(1) assigneray ; avowrei, avowra ; chargerey : demanderay ; p*r*overa ; r*ecover*ay, r*ecover*a :—(4) abat*er*ai ; mettray ; p*er*dray

Il avera, avra ; serra :—(1) agardera ; c*er*tefiera ; chacera ; demaundera ; dorra, durra [doner] ; entrelessera ; forbarra ; grievera ; lyrra [lier] ; r*e*cordra ; recovera ; resterra ; triera :—(2) faudra ; istra [issir] ; replevyra ; resortira ; seisera ; tendra [tenir] ; toudra ; tresaudra [M.F. tressaillir] ; vendra, vendera [venir] :—(3) cherra ; porra ; recevra, r*e*ssewera ; vaudra, vaudera ; voudra, vodra :—(4) abatra, abatera ; enquerra ; extendera [L. extinguere] ; fra [faire] ; mettra ; respondera, respo*u*ndra ; sewera ; survyvera ; vendra [vendre].

Nous averoms ; serroms, serrom :—(1) countroms ; demoroms ; entroms ; oustroms ; paieroms ; pledroms ; rebot*er*oms ; recov*er*oms ; tailleroms :—(2) orroms ; tendroms ; meyntendroms ; touderoms ; vendroms : —(3) receveroms : —(4) abateroms ; conuser*o*ms ; enquerroms ; esteyndroms [L. extinguere] ; froms, feroms ; defroms.

Vous averez ; serrez, errez ;[1] irrez :—(1) affermerez ; doret, dorretz enjoierez ; lierez ; ostretz ; plederez ; recoverez :—(2) garaunterez, garanterez ; resortirez ; toudrez ; vendrez ; avendrez ; verrez :—(3) deveretz ; porretz :—(4) atteinderez ; dirretz ; joindretz ; mettret, mettrez ; respoundrez.

Il averount ; serrount ; irrount :—(2) vendrount [venir].

Conditional

Jeo serreie, serrei, serroy :—(1) avowrei ; barrai ; chaceray ; dorroy ; lierai ; plederay :—(2) assentirey :—(3) deveroy ; porroie, porroy, porrey ; voderoi :—(4) dirroy ; frei, frai ; perderei.[2]

Il avereit, averoit ; serreit, serroit ; esterreit ; irreit :—(1) attornereit ; barreit ; bosonereit ; chacereit ; demorreit ; dereynereyt ; estovereit ; grevereit ; lereit[3] [‘to lease’] ; osteroit ; passereyt ; recovereyt ; sauvereit ; targereit ; voydreit :—(2) assentireit ; garaunterreit ; girreit, giseroyt ; lirreyt, lierreit [L. licere] ; serviroit, servereit ; tendreit ; vendreit, vendroit ; avendroit :—(3) cherreit, cheyreit ; devereit ; porreit ; saveroit ; surserreit [surseoir] ; vaudreit, vaudereit :—(4) abatereit ; acrereit, accresterreit ; destreindreit ; dirroyt ; freit, frait ; defreit ; nuereit ; prendreit ; querroit ; enquerroit ; remeindreit ; suereit ; ensewereit, ensiwereit, ensueroit ; suffisereit.

Nous serrioms :—(1) acceptерioms ; dorreyoms ; osterioms ; userioms :—(2) avenderioms :—(3) purrioms, purioms, porreoms ; vodrioms, vodreyoms :—(4) abaterioms.

Vous averietz ; serriet, serrietz, serriez ; irriez :—(3) deveriez ; porrietz ; vodriez, voderiez, vodreiez :—(4) dirrietz ; esturteriez ; freiez, friez.

Il avereient ; serroient serreint :—(1) agardereint ; demureient ; recovereient :—(3) devereynt ; poreient, poreint ; vodreient :—(4) dirreient, dirreiount ; prendreyent ; remeyndreint ; resporeynt ; enqueroynt.

Present Subjunctive

Jeo eie, eye, ei ; seie, soie, sei :—(2) tiegne :—(3) deive, deyve ; pusse ; voille, voil.

Il eit, eyt ; seit, soit, soyt ; estoise ; aille, ayle, voit, voyse :—(1) demorge, demoerge, demerge ; doigne, doyne :—(2) disseise ; defaille ; elise, eslise ; faille ; gise ; tiegne, tigne, teigne ; retigne ; viegne, vienge, viene, vigne, veigne :—(3) deive, deyve, dive ; pusse, puisse, peusse ; veie ; voille :—(4) abate ; conusse ; courge ; die, dye ; dedie ; entende ; face ; yonse [joindre] ; mette ; moerge ; pleynte ; prengne, preigne, prenge ; querge ; remeygne ; respoyne, respoigne ; survyve.

Nous eioms, eimes, ayms ; seioms, seiom, seoms :—(3) pussoms, puissoms : sachoms :—(4) enqergoms.

[1] *Vous nerrez james r[espond]u* = you will never be answered. A single instance.

[2] If these forms are not, they ought to be, conditional.

[3] Apparently from the verb which in O.F. is *laier* or *laire*. Forms from this word and forms from *laisser* seem to be used in the sense of our ‘to lease,’ as if there were some confusion between them. But unfortunately we did not attend closely to the indications.

Vous eietz, eiez ; seiez, soiez :—(1) chacietz ; doignetz :—(3) devet, devez, devietz ; pussez, pusset, peussez, puissez ; receivet ; sachetz ; voillez :—(4) diez, dietz, deitez ; facet, facez ; prenget, *pr*engez, preignez, preingez ; suet.

Il eient ; seient, seyent, soent, soeent :—(2) tiengnent ; veignent :—(3) deivent, devient ; pussent, pussont, peussent, puissent ; voillent :—(4) facent ; remeygnent ; respoynent.

Imperfect Subjunctive

Jeo usse ; fusse, feusse :—(1) aff*er*masse ; lessasse ; nomasse ; p*or*tasse :—(2) tenisse ; venisse :—(3) duisse ; vousise :—(4) abatisse ; deisse, deise ; meisse.

Il eust, oust, ust ; reust ; fust, fusse ; estust ; alast :—(1) assignast ; avowast ; chauntast ; clamast ; demorast ; deviast ; entrast ; moustrast ; passast ; pledast ; recoverast, *re*coverist ; remuast [‘to remove’] ; taillast ; tesmoinast ; tornast ; trovast :—(2) tensist ; vensist, vensit ; avensit ; convensit :—(3) dust ; vousist, vosist :—(4) attendisit ; destreinsit ; dist ; enquist, enqueist ; fist ; joinsit, joynsyst ; p*er*disit ; rendisist ; suyist, sussit.

Nous eussoms, ussoms ; fussoms, feussoms, fuissoms :—(1) agardissoms ; countisso*ms* ; desclamasso*ms* ; liasoms ; pledassoms ; portassoms, p*or*tissoms :—(3) deussoms ; sayssoms, suyssoms [savoir] :—(4) deissoms ; dedeissoms ; meissoms ; p*er*dissoms.

Vous eusset, euset, usset, ussez ; fusset, fuissez, feusset :—(1) agardasset ; alegisset ; alienassez ; clamassez ; deviassez ; g*ra*ntassez ; recoverassez, recov*er*isset :—(2) tenisez, tenset ; tolissez :—(3) dussetz ; suyssez ; vousisset :—(4) abatissez ; deisset, deissez ; feissetz, faisset ; meisset, meisez, maysset ; p*rei*ssez, prisset ; requeissez.

Il eussent, ussent ; fussent, fuissent, feussent ; alassent :—(1) alegiassent ; chargeassent ; demorrassent ; deviassent ; juggassent ; jurassent ; ordinassent ; *re*cov*er*issent :—(2) revertissent ; tenissent ; venissent ; devenissent :—(3) dussent, deussent, dussont :—(4) deissent ; enqueissent ; remanessent, remainessont ; suyssent.

Active Participle and Gerund

Eaunt, eyaunt ; esteaunt ; countreesteaunt ; alaunt :—(1) acceptaunt ; avowaunt ; chargaunt ; mangaunt ; resussitant :—(2) alargisaunt ; defuant ; enclarisaunt ; issaunt ; *re*linquisaunt :—(3) receyvaunt ; reseaunt ; sachant :—(4) d*es*treyna*u*nt ; destruant : ensiwant ; fesaunt ; mesconissaunt ; p*er*nant ; pleignaunt ; rendaunt ; respona*u*nt ; sourdaunt ; teisaunt ; treaunt ; vivaunt.

Passive Participle

Eu ; este ; ale :—(1) acroche ; aide, eide ; amende ; amercie ; appelle ; arame ; areygne ; avise ; chace, chacie ; charge ; continue, contenu ; cree ; dampne ; demorre ; descolee (m.) ; done ; dowe ; engendre ; engette ; essonie ; examine ; excepcione ; feffe ; founde, foundu, fundu : jettie, jettu ; leve ; paye ; presente ; purchase ; quasse, quassie ; quiteclame ; recoveri ;

severe; trie; use, usee (m.), euse; vouche:—(2) accompli; amorty; anyenti; choisi; departi; dormy; endormy; enfraunchi, enfraunche; enlargi; failly; garny; garraunti, garraunte; issu; ju [gesir]; oi; parempli; pery; puni; despuny; ravi; replevi; servy; tenu; continu; meyntenu; tollet; venu; devenu; vesti, vestu:—(3) aparceu; apparu; conceu, consu; descheiez (pl.); due (f.); meu; receu, resceu, ressu; remu, remue (m.?); sue [savoir]; veu, vew, weu; purveu:—(4) abatu; acreu, acru; ars; assous, assout; atteynt; conu; defendu; descendu, descendy; destreynt; destruit; dit, dist; dedit; enclos; encoru; enfreint; escrit; esleu, eslieu, eslist; espaundu; esteynt [L. extinguere]; fet, fait; forclos; joint; disjount; lewe (m.), lue (f.) [lire]; mis, mys; demys; molu; nee (m.); pendu; suspendu; pewe [M.F. paître]; pleynt; pris; compris; quis; enquis; requis; restreint; somouns; suy, swy; nounsiwy ['nonsuited']; tendu; entendu; estendu; tret; sustret; tue (m.?) [taire]; vendu; institut; restitut; execut.

Already in the thirteenth century the Englishman made mirth for his neighbours by turning too many of his verbs into the first conjugation. A little poem, written about the year 1264, represents him as saying *rier, chier, rompier* instead of *rire, cheoir* and *rompre*. Beaumanoir, the lawyer and poet, invents an Earl of Gloucester whose preterites from *dire, rire, venir, vouloir* are *disa, ria, vena, vola*.[1] That there was some cause for this merriment all modern authorities are agreed. As time went on, the bad habit dominated our law French in its decadence. Our table of verbal forms will show that in the fourteenth century the old inflexions were still offering a stout resistance. A few notes on that table may not be out of place.

Infinitive.—It is in his infinitive that the English clerk appears at his worst. In mitigation of his offences we may observe, first, that the man who writes *tener* instead of *tenir* is often capable of conjugating the rest of the verb in a highly respectable way; and secondly, that the termination of the infinitive is often omitted, and that *au' et ten'* tempts careless clerks to supply with the common *-er* the place of the missing *-oir* and *-ir*. It is also to be remembered that *-er* was destined to become in English the regular representative of the French *-re*, as may be seen in dozens of cases that have nothing to do with the conjugation of verbs: *master, chamber*, and so forth. Englishmen do not like a final *-re*. Even when we write *-re* (as in *meagre* and *centre*) we most of us pronounce *-er*, or rather, we pronounce no *r* at all. Still, when all is said, such forms as *aver, tener, oyer* (for *oir*) are common, and a badly made infinitive may

[1] P. Meyer, Nicole Bozon, p. lxiv.

easily induce a debasement of the whole verb. On the other hand, there are not many verbs which can be said to be of uncertain or of double conjugation. One of the few is the legally important verb which means 'to recover,' and here what we see is that a verb really belonging to the popular conjugation very frequently takes forms that pertain to a verb in *-ir*. The guess seems permissible that *recoverer* from Lat. *recuperare* was contaminated by *recoverir* from Lat. *recooperire*. Modern French has the two verbs *recouvrer* and *recouvrir*, and in England after recovering an umbrella by action at law we may recover it with silk. A slip from the first to another conjugation is rare. One clerk shows a steady preference for *averir* (to aver), whereas the modern French verb is *avérer*. But this can hardly be a bad mistake, since the verb is made from a French adjective in a manner that usually produces verbs in *-ir*, such as *adoucir*, *affranchir*, *anoblir*. We may see *barrir* instead of *barrer* written by a clerk who sometimes writes *chartir* for the common *chartre* (our substantive 'charter'). It must not be supposed that such forms as *server*, *isser*, *vester*, *garner*, *assenter* have got the upper hand; still they are not curiosities; a considerable search was necessary before *oir* was found, while many an *oyer* was seen.[1] Where in Old French, under the influence of certain preceding sounds, the Latin termination *-are* gave rise to *-ier*, not *-er*, our three manuscripts favour the simple *-er*, and, though we have elsewhere seen many verbs in *-ier*, we fancy that *lesser*, *pleder*, *charger*, *maunger* were in the fourteenth century commoner among English scribes than *lessier*, *pledier*, *chargier*, *maungier*.

Present Indicative.—In the 1st person singular of the first conjugation a final *e* has become usual if the radical ends in a consonant (*jeo pose*), but even then it is not always found, and it is not usual if the radical ends in a vowel (*jeo loo*). In the same person of the other conjugations the terminal *s* is not yet added. The 3rd person singular of the first conjugation has lost its final *t*: *portet* would be a 2nd person plural, not a 3rd person singular; but (*il*) *passet* has been once seen as a rare exception. Sometimes the *-e* is dropped as in *il cleym*. We can no longer regard this as a specially subjunctive form representing, not *clamat*, but *clamet*. Rather we see the customary carelessness of the feeble *-e*. The form *demoert* instead of *demoere*

[1] The suggestion has been made that the *e* between *i* and *r* in *oyer* is only an instance of the parasitic *e* common in Anglo-French; Stimming, Boeve de Haumtone, p. 181. Certainly in our experience *oyer* appears as normal, while this cannot be said of *server*, *aver*, *render*, or the like.

from *demorer* seems to have been usual. Was it due to the misleading influence of *mourir* (to die)? One of the strongest convictions of English clerks was that the 1st person plural of all tenses must have an *m* in its termination. In tenses other than the preterite the usual ending was *-oms*, and apparently this is intended when what follows the *m* or the *o* is the closed loop which in Latin script would signify *-us*. The instances of *-omps* are chiefly, but not solely, due to one clerk. Apparently he only inserts the *p* when the radical ends in *d* (e.g. *agard-omps*, *entend-omps*). In the 2nd person plural of all tenses, except the preterite, terminations in *ez*, *etz*, and *et* seem to be regarded as equivalent, so that the choice between them is matter of taste. The exceptional *vous estes*, *vous dites*, *vous faites* will be observed. The form *vous responez* (not *respondez*) seems to have been prevalent; but all parts of this common verb are frequently represented by a mere *r* and a flourish. In the 3rd person plural of the present and preterite tenses the word generally ends in *-ent*. But there are clerks with a leaning towards *-unt*, and clerks with a leaning towards *-ont*. The forms *sumus*, *estis*, *sunt* strike the eye and look like latinisms. The old change of vowel in the verb *clamer* might be abundantly illustrated: *il cleime* and *il cleiment*, but *nous clamoms* and *vous clamez*. This ancient usage is being well sustained, and there are distinct indications of a similar alternation of *ou* and *o*: *il doune*, *nous donoms; il moustre*, *nous mostroms; il respount*, *vous responez*.

Imperfect Indicative.—This is a very uncommon tense. Apparently our ancestors, at all events in legal discussion, behaved as though the French verb had one past tense too many. Having *il porta* and *il ad porté*, they seem to think *il portoit* superabundant. If we leave out of account *avoir* and *estre*, there are very few verbs which have an imperfect upon active service, and, if we look at these, we shall find that as a general rule their preterites are rarely employed. The state of the case is curiously illustrated by the treatment of the verb *dire* (to say). In the 3rd person plural you use the imperfect (*disoient*); in the 3rd person singular you use the preterite *dist* or *dit*. On the other hand, any forms which would represent the modern *il disait* and *ils dirent* are, if they occur at all, of great rarity. If you have to translate the *A. B. venit et dixit* of the Latin record, you say *vint et dist*; but *venerunt et dixerunt* becomes *vindrent et disoient*: that is, *venerunt et dicebant*. Whether this was a peculiarity of Anglo-French conversation or a peculiarity of our legal vocabulary, it is for others to say. The Latin imperfect was not common on our Latin plea rolls

except in the case of deponent verbs.[1] Perhaps it might be urged that every 'act in the law' is done once and for all at some definite moment of time. At any rate, the existence of this phenomenon (the disuse of the imperfect indicative) seems to be beyond doubt, and it throws a heavy weight on to the imperfect subjunctive. The verb *faire* (or *fere*) is a rare instance of a verb which keeps all its tenses in working order; but we gravely doubt whether *il fesoit* and *il fist* express different ideas. For the rest, it is noticeable that the commonest imperfects are those of certain verbs which have infinitives in *-oir*: namely *pouvoir, vouloir, savoir,* and *soloir* (Lat. *solere*). Whether such an infinitive as *savoir* or *saveir* naturally suggested *il savoit* or *il saveit* as the right form of a past tense, while *porter* did not similarly suggest *il portoit* or *il porteit,* may be worthy of consideration.[2] We have on more than one occasion seen *ert* as an equivalent for the Latin *erat.* The tendency to contract the 3rd person plural, *e.g.* from *disoient* into *disoynt* or *diseint,* is well marked; and so is the struggle between *oi* and *ei.* The old Norman forms of the first conjugation (*portoe, portoes, portot*) have not been seen.

Preterite.—In this highly popular tense what would be described as gross blunders seem to be fairly few: blunders such as *oya, maundi, destreinastes, joinastes.* In the 3rd person singular *-ist* is a rather common termination which may be supposed to spread outwards from such forms as *mist* and *fist.* It is of some importance to observe that *remeindre* makes *remist.* It is not always easy to tell a preterite indicative from an imperfect subjunctive. One clerk steadily writes *fust* as an indicative; another steadily writes *fut* as a subjunctive. A third drops the *t* in the preterite, and steadily writes *il fu.* Whether a 3rd person singular shall end in *-i* or in *-it* appears often to be decided by whim; the termination in *-i* or *-y* is very common. On the other hand, in the first conjugation *-at* has not been noted. Some scribes regularly distinguish between the present and preterite tenses of *venir* and *tenir* (*tient* and *tint, vient* and *vint*); but others will use the same form for both tenses. As a 3rd person plural from *venir* we often see *vindereient, vindreint,* or the like, standing in apposition with *disceient.* This looks like a hybrid between the imperfect

[1] If they have to render in Latin the phrase 'and on his death the right descended,' the clerks use *descendit*; but in exactly the same context they will use *resortiebatur* and *revertebatur.*

[2] The confusion of the two tenses has been often noticed: 'C'est, comme on sait, un usage auquel renoncent difficilement les étrangers, anglais ou allemands, qui dans leur langue n'ont qu'un seul temps pour le prétérit défini et l'imparfait' (Paul Meyer, Revue critique, v. (2), 379). But the common complaint seems to be that the Anglo-French poet was too fond of the imperfect.

veneient and the preterite *vindrent*, and seems due to the curious fact, noted above, that *il diseient* was for practical purposes the plural of *il dist*. In the work of some clerks the 3rd person plural may sometimes end with *-unt*, *-ont*, or *-ount*. The curious *nous aveimes* and *vous aveites* will attract attention. They are not common; but on the other hand we have looked in vain for *nous eûmes*, *vous eûtes*, *il eurent*, or anything that would develop into them. In truth the preterite of *avoir* is hardly used as an auxiliary. The imperfect does its work: which means that the ordinary verb has a pluperfect (or a first pluperfect), but no *passé antérieur* (or second pluperfect). There are cases in which *nous esteimes* means much rather 'we were' than 'we stood,' and seems equivalent to *nous fûmes*. The following passage may deserve transcription: 'A *vos*tre sute estoimes en*pri*soné . . . ta*unqe* no*us* aveym*es* fait ceste obligacioun.'

Future and Conditional.—It is not always easy to tell these from each other. In the 3rd person singular and plural they stand well apart, and they are used much as we should expect them to be. But in the 1st and 2nd persons plural we often find the future terminations *-oms*, *-ez*, where we look for the conditional *-ioms*, *-iez*. In the 1st singular there is great similarity; the conditional has not yet acquired its final *-s*, and a termination in *-ay* seems common to both tenses. The 1st person singular of the future shows some tendency to end in *-a*. A grammarian told Englishmen that they should say *je ferrey* and not *je ferra* 'come font les sottez gents.' [1]

In the first conjugation, if the radical of the verb ends with *n* or *r*, we are likely to see contraction: from *doner* comes *il dorra*; from *demorer* comes *nous demoroms*; from *forbarer* comes *il forbarra*. Apparently 'he will recover' is *il recovera* (not *recoverera*), and 'he would recover' is *il recovereit* (not *recoverereit*). These forms we shall not scruple to use, even when only *rec'* is written. They have the disadvantage of making *il recovera* ambiguous, for it may be preterite or it may be future. Was this one of the causes which made *il recoveri* a popular form of the preterite? In the other conjugations an 'inorganic' *e* often makes its appearance. Our scribe will write *abatra* or *abatera*, *vendra* or *vendera* (from *venir*), and we are left to guess whether any difference of sound is being represented by the alternative forms. The appearance of *vous garaunterez* does not seem to be decisive in favour of a *garaunter* inflected throughout as a verb of the first conjugation. It may be considered as equivalent to *garauntrez*, and we cannot say that a verb in *-ir* is bound to show an *i* in the future; thus

[1] Zeitschr. für neufranz. Sprache, i. 27.

we understand that *orroms* from *oir* is good and ancient. Neither in this nor in any other context should much stress be laid on the fact that a consonant is or is not doubled; but the doubling of the *r* in *serra*, *serreit*, is a well-established fashion. The *il fra*, *il freit*, *nous froms*, from *fere*, are used with almost unfailing regularity. In the conditional *ei* prevails over *oi*; but neither is uncommon. It was to be expected that *venir* and *vendre*, and again that *tenir* and *tendre*, would coincide at this point, and as these four verbs are all of them of legal importance (for men are always coming and selling, holding and tendering) the following sentence deserves note: 'il vendra le mariage qaunt le heir vendra a soun age.' We have met with a clerk who in the 1st person plural of the conditional affects such forms as 'av*er*eymes, porreym*es*, rebot*er*eym*es*, lyereymes;' but this seems a singular fancy.

Present Subjunctive.—We only give examples which seem to diverge from the indicative forms. In the 1st and 2nd persons plural the *i* of the *-ions*, *-iez* of Modern French is hardly ever seen. The terminations are simply *-oms* and *-ez* (*-etz*, *-et*).[1] This being so, in the first conjugation this tense is not to be distinguished from the present indicative, except in a few instances. The irregularity of *demorer* has been noticed above; to an indicative *il demoert* corresponds a subjunctive *il demoerge*. The introduction of the *g* in the present subjunctive of *venir*, *tenir*, *prendre*, and some similar instances, is a well-known and explicable phenomenon. The *g*, however, is sometimes inserted before and sometimes after the *n*, and we may even find *ngn*. Starting from this point, Englishmen seem to extend the use of *g* until for some of them it becomes a sort of common sign of subjunctives. The forms *querge* (from *querre*) and *demorge*, *demoerge* show the *g* inserted after *r*.[2] 'In the present subjunctive of *dire* we find in Old French the forms *que je die*, *que tu dies*, *qu'ils dient*, etc.' 'The old subjunctive (of *faire*) was written *que je face*, *que tu faces*, *qu'il face*.'[3] The present subjunctive of *pouvoir* was in common use. At first sight it might seem as though we were confusing two tenses when we give *vous puissez* and *vous pussez* as alternatives; but these two forms are used by different clerks when a present is required (*peussez*

[1] This is so in the three manuscripts that we have examined. In others we have noted *-iez* as a not uncommon termination; but we could not say that it was distinctive of the subjunctive and was not the outcome of a leaning to such forms as *pledier*, *lessier*, *chargier*. The scribe of the Maynard MS. often uses *aviez* and *deviez* when a present indicative is wanted.

[2] From the poem of Frère Angier a rich crop of Anglo-French subjunctives in *-ge* is collected by P. Meyer, Romania, xii. 200.

[3] Darmesteter, Grammar, p. 373.

being yet a third form), and we are not sure that we have seen an imperfect subjunctive of this verb.

Imperfect Subjunctive.—Many examples can be given of this hard-worked tense. The terminations of the 1st and 2nd persons plural are not the *-ions*, *-iez* of the modern French verb, but simply *-oms*, *-ez*. Attention may be attracted by *nous agardissoms*, *portissoms*, *countissoms*, *vous alegisset*, alternating with *agardassoms* and the like. Such forms do not seem to be common, and our specimens were chiefly found in one place. They do not imply that a verb in *-er* has gone out of its conjugation. 'It was only in the sixteenth century that the 1 and 2 plur. *chantissons*, *chantissiez* were definitely replaced by *chantassions*, *chantassiez* under the influence of the *a* of the other persons.' The starting-point was the Latin *cantassemus* with the stress on its third syllable.[1] The *s* before *t* having become mute, the 3rd person singular of this tense drew nigh in many cases to the preterite. Such forms as *vensist*, *vensit*, *convensit*, *tensist*, which are not uncommon, are, we suppose, to be explained by some misleading analogy.[2]

Active Participles.—Of these there is little to be said, but the occurrence of *relinquisaunt* and some kindred words gives occasion for the remark that it is not for want of looking that we offer few examples of the inchoative forms of the 'regular' verbs in *-ir*. They have enriched our own language with many verbs in *-ish*, such as *relinquish*, *finish*, *punish*, and many more. But somehow or another it happens that our lawyers seldom use those parts which preserve the remains of a Latin verb in *-scere*. This is largely due to the general non-user of the imperfect indicative. We have no chance of seeing *il garauntisoit*, for, even if it were wanted, its work would be done by the preterite *il garaunty*. We have once seen *vous garrantez* written in full in the present tense (you warrant): not vous *garrantissez*. We have also seen *vous disseisez* for 'you disseise.' We have also seen *q'il disseise* as the present subjunctive of *disseisir*. On the other hand, in the present indicative *nous enyntissoms* (M.F. *anéantir*) may be recorded. A single occurrence of *punyser* instead of *punir* seems due to some blunder occasioned by inchoative forms.

Passive Participles.—These form a pleasant contrast to the infinitives. Men who write *vester* do not write *vesté*. There seem to be but few instances of a participle made on wrong lines. Some of the aberrations from Modern French are justifiable. We may expect to see *vesti* as well as *vestu*, and a 'strong' participle from *élire* still

[1] Darmesteter, Grammar, p. 347.
[2] Stimming, Boeve de Haumtone, p. 227.

lives in the substantive *élite*. Some blundering over *contenir* and *continuer* ('contain' and 'continue') has been observed on more than one occasion. A confusion between the two verbs that in Modern French are *fonder* and *fondre* seems to be witnessed by the frequent appearance of *foundu* in such phrases as 'Your action is founded on, etc.,' 'This church was founded, etc.' With the meaning of our 'to remove' our lawyers frequently use not *remouvoir* but *remuer*, which they seem to inflect consistently as a verb of the first conjugation. Its participle is written as *remue*, and the final *e* we take to be not obscure but accented. Here again, as in the cases of *recuperare* and *recooperire*, of *continere* and *continuare*, of *fundare* and *fundere*, we seem to see confusion; *remuer* from *remutare* is set to do the work of *removere*. Of the occasional use of a double *e* to represent the *-é* of the modern language we have spoken above and shall speak again.

The various parts of the verb were being used with greater regularity than would be suspected by any one who looked merely at the old printed text. In particular our ancestors had no dread of the subjunctive. Apparently it was used in every judgment. Translated into English the judgment assumes this shape: 'Therefore this court awards that the demandant take [*not* takes] nothing by his writ but be [*not* is] in mercy and that the tenant go [*not* goes] to God without day.' In such a case we shall find not *prent* but *pregne*, not *est* but *seit*, not *va* but *aille*. Then when the judgment is stated in the past we shall be told that the court awarded 'qe l'abbé alast a Dieu sanz jour,' or 'qe l'abbé et le chapitre recoverassent l'avoweson.' The subjunctive was very far from being a disused mood. The identity in many instances of its forms with those of the indicative may often conceal this fact. Lawyers are always asking for judgment whether something ought to be done or can be done: 'whether you ought to be received to this averment' or 'whether he ought to be answered.' Now, as already said, 'nous demandoms jugement si nous devoms' and 'si vous devez' are indecisive, for *devoms* and *devez* are subjunctive as well as indicative forms. But when we come to the third person singular, though we may find *s'il deit*, we are more likely to find *s'il deive*, and it is much to be regretted that the editor of the vulgate text has with perverse consistency turned this into *doyne*. So again we shall find *si nous pussoms*, *si vous pussez*, *s'il pusse* (or *puissoms*, *puissez*, *puisse*): forms which stand well apart from the *pooms*, *poez*, *poet* or the like of the indicative.

So soon as the serjeants begin to reason they fall into the subjunctive. The word 'if' or some equivalent must needs play a large

part in the ascertainment and development of the law, and the subjunctive appears as the mood of hypothesis. We cannot say that *si* invariably governs the subjunctive; but it generally does so unless what is in form an hypothesis is in substance a statement of some fact which exists or is represented as existing.

A few typical instances of the use of the subjunctive we will here give, partly in order that our readers may fashion for themselves some preliminary idea of the sort of language that will come before them in the body of this book, partly in order that by the use of italic type we may indicate the varying extent to which words are abbreviated. That there was not a little laxity in the employment of moods is plain; but some rules might be inductively obtained. Thus it appears that while the terms which mean 'whereas' (*la ou*), 'whereby' (*por qei*), and 'since' or 'because' (*pur ceo qe, de puis qe, del houre qe, desicome*) introduced the indicative, it was good style to use a subjunctive after 'if' (*si*), 'although' (*coment qe, mès qe, tut*), 'until' (*tantqe, avant qe, einz qe*), and 'unless' (*sanz ceo qe*).

I. *The Subjunctive in the Simple Sentence.* Estoyse l'ave*re*me*n*t (Let the averment stand). Ore veigne l'assise (Now let the assize come). Soit del homage com e*stre* put (As to the homage, be that as it may). Tiegne la co*u*rt de [=du] fet ceo q*e* ele vod*ra* (As to the deed, let the court hold what it pleases). Mal gré eit il qe fut a conseil a porte*r* cesti q*uare* i*m*pedit. (Little thank have he who counselled the bringing of this *quare impedit*!). Voille Dieus q*e* vo*us* suyssez la ve*r*ité (Would God that you knew the truth!).

II. *The Subjunctive in the Subordinate Clause.* (a) *Substantival Clauses.* Statut veut[1] qe le baill*if* viegne en court (Statute wills that the bailiff come into court). [Le Roy] coma*un*da a les justices q'il ne alassent a nul ju*gement* (The King commanded that the justices should not proceed to any judgment). No*us* ma*u*ndroms a vic*ounte* q'il face venir bon pays (We will bid the sheriff that he cause a good jury to come). [Il] avoit br*ef* as justic*es* q'il feissent dr*eit* (He had a writ to the justices bidding them do right). Feut agardé q'il preist rien. (It was awarded that he should take nothing). Le Roy ad g*r*aunté q'il eient feire (The King has granted that they have a fair). Statut ne

[1] In relation to writs and other documents *veut* is often equivalent to our 'says' or 'states.' So *le bref veut q'il tient* and *le bref veut q'il tiegne* express different ideas: the writ states that he holds, or commands that he hold.

doune mye qe fe*mm*e soit receu (The statute does not concede that the woman be received). Et dit ly fut qe il ensemblem*ent* ove les autres . . . jurassent (And he was told that he along with the others must swear). Ley ne soeffre p*as* qe le ten*ant* a t*er*me de vie tiegne par homage (The law does not allow a tenant for life to hold by homage). Nous prioms qe la court le tiegne a *grau*nté (We pray the court to take it for granted). Jeo loo q*e* v*ous* diez aut*re* chose (I advise you to say something else). Veez qe ceo ne seit t*ran*esc*ript*! (Beware that it be not a mere transcript!). N'entendoms pas[1] qe le Roi voille e*str*e r*espond*u (We cannot think that the King desires an answer). N'entendoms mie qe en la bouche l'abbé ceste ex*cepci*on i gise (We cannot think that this plea lies in the abbot's mouth). Il covient q*e* il se face heir (It behoves him to make himself heir). Il n'est mestier q'il soit nomé (There is no need that he be named). Il bosoygne q'il eit eide (It is needful that he have aid). Il ne estut[2] ja q*e* Aleyn se ust attorné (Still it did not behove Alan to attorn himself). Il est reson q*e* no*us* eioms acquit*aun*ce (It is right that we should have an acquittance). N'est mye meschief q*e* Cecile seit mys a respond*re* (It is no hardship that Cecily be put to answer). Bone foy se*rr*eit . . . q'il seit deschargé (Good faith requires that he be discharged). Jeo pose[3] q*e* Joh*an* de Deno*m* me ust enfeffé (I put case that John de Denom have enfeoffed me). Possible est q'il eyt issue (It is possible that he have issue). Bien est possible qe il ne soit amenable en court (It is quite possible that he cannot be brought before the court). Il semble[4] a moy par celle taille puissoms avower*ie* fair*e* (It seems to me that by virtue of this 'limitation' we can make an avowry). No*us* ne affirmo*ms* p*as* q*e* ceo soit dower*e* de vos*tr*e eglise (We do not affirm that this is the dower of your church). Vous n'aviez [*corr.* n'avez] mye dit qe l'abbeye ne la avoweson soient tenuz du Roy en chief (You have not said that the abbey or the advowson is held of the King in chief). Vous n'avet p*as* dedit qe tieu jug*ement* ne se fist com no*us* avo*ms* aleggé ne qe no*str*e fait ne soit tiel come no*us* avo*ms* dit (You have not denied that such a judgment as we have alleged was made or that our deed is what we have

[1] This very common phrase does not express a purely intellectual condition: it is deprecatory.

[2] From the verb *estovoir*, the origin of our substantive 'estover.'

[3] The verb *poser* seems usually to govern the subjunctive; but *supposer* the indicative.

[4] But *piert* and *semble* generally take the indicative.

said). *Par* ceo respo*uns* la co*ur*t entend*e* qe Tydeley soit ville (From this answer of yours the court [without deciding that Tydeley is a vill] takes it to be a vill for the purpose in hand).

(b) *Adjectival Clauses.* Il put don*er* nul response q*e* seit cont*r*ariaunt a la fyn (He cannot give such an answer as would be contrary to the fine). Il n'y ad nul rente q*e* ne soit rente s*er*vis*e* ou rente sekke (There is no rent that is not rent service or rent seck). Ho*m*me entent q*e* a chesqun q*e* soit p*ar*tie au plee appent d'estr*e* p*ar*tie a la pr*o*ve (It is generally understood that any one who may be party to the plea ought to be party to the proof).

(c) *Adverbial Clauses.* Co*m*ment qe le[s] p*ar*oles seient cha*u*ngez, le dreit est un (Although the words be changed, the law is the same). Mès qe il eit la vewe, uncore av*er*a il meme le plee apr*è*s la vewe (Although he have the view, he will have the same plea after the view). Tut feisset vo*us* wast, Rog*ier* ne recov*er*eit (Albeit you committed waste, Roger would not recover). Il est plus lede d'est*re* arent vileyn, mesqe il soit mulieré, qe n'est d'estre bastarde et fr*au*nc (It is an uglier thing to be an arrant villein, though he be legitimate, than to be bastard and free). Vo*us* ne volez jammès *estre* la vo*us* duissez ta*u*ntqe vo*us* seiez boté p*ar* la co*ur*t (You will never get to the point [in pleading] where you ought to be until you be driven to it by the court). La fyn ne [se] eng*r*ossera p*as* av*a*nt qe le heir le coniss*our* viegne en court (The fine will not be engrossed until the conusor's heir come into court). La ley veot q*e* ho*m*me sache de qei il deit r*espoundre* einz ceo q'il veigne en court. (The law wills that a man know for what he has to answer before he come into court). Ceo n'est mye assez saunz ceo qe vo*us* diez qe . . . (That is not enough unless you say that. . . .). Il vynt et jur*a* de present*er* . . . sa*u*nz ceo qe il jurast de nul aut*re* point de la vewe (He came and swore to make presentments . . . without his swearing[1] about any other point in the view of frankpledge). Ceo est un bon respo*u*ns a moy, sey jeo p*r*ivé ou estr*au*nge (That is a good answer to me, be I privy or stranger). Le quel qu'il eyt, fee ou terme, si covent qu'il r*espoigne* (Whichever he have, fee or term, it behoves him to answer). La execuc*ioun* no*us* fut agardé, en qi

[1] The phrase *sans ceo qe* (in Latin *absque hoc quod*), which became famous in the history of special pleading, is at first an untechnical phrase. Often it can be translated by 'unless.' Often the natural English equivalent is 'without' followed by a participial clause, as in the example now given.

> maynz qe les ten*emenz* fuissent (Execution was awarded to us, no matter in whose hands the tenements were). De qi qe ele [= l'avoweson] soit tenuz, le Roy p*resentera* (No matter of whom the advowson be holden, the King shall present). Qi fiz q*e* il soit en mo*u*nde, s'il naquit deinz esposailles . . . il s*erra* tenu fiz T. (If he was born within wedlock, he shall be held for T.'s son, no matter who be his real father).

Of the sequence of tenses in hypothetical sentences it may be well to give some examples, for the rules that obtained in Old French were not those that obtain in the modern language, and the neglect by our lawyers of the imperfect indicative becomes very noticeable at this point. The main constructions are the following:—(I) The present subjunctive may be followed by the present indicative, as in 'If A eject B, B has an action.' (II) But after a present subjunctive we commonly find a future indicative: 'If A eject B, B will have an action.' (III) The hypothesis, however, is yet more usually thrown into a past tense, namely the imperfect subjunctive, and the normal construction appears to be that this should be followed by the present conditional: 'If A ejected B, B would have an action.' (IV) We say that this appears to be the normal construction, but it is to be confessed that forms that at any rate look like those of the future not unfrequently take the place of the conditional forms. This is especially the case when the first and second persons of the plural are in use. Thus we shall see *nous averoms* or *vous serrez* where we expect *nous averions* or *vous serriez*. Whether the mistake be in the accidence or in the syntax we will not decide, but the evidence does not compel us to describe as regular a construction which would be parallel to 'If A ejected B, then B will have an action.' (V) Then, as might be expected by students of Old French, one imperfect subjunctive may be followed by another. And (VI) the same or a closely similar effect can be produced by one present conditional followed by another. In Old French, so we read, a man had his choice between *je partisse demain si je pusse* and *je partirais demain si je pusse* and *je partirais demain si je pourrais*.[1] None of these sequences is unknown in our Year Books, but that which links a conditional to an imperfect subjunctive seems to be the favourite, and this would be our model if we had to expand *si vous nous vouch' nous vous gar'*. (VII) The perfect subjunctive (*j'aie porté, tu aies puni, il ait reçu*, etc.) is not nearly so common a tense as the imperfect; still the use of it can

[1] Darmesteter, Grammar, p. 760.

be illustrated. Then (VIII) there may be speculation as to what would have happened in the past: 'If he had been ejected, he would have brought an action.' Here one pluperfect subjunctive is followed by another, or, if that term be preferred, by the 'second form of the past conditional' (*j'eusse porté, tu eusses puni, il eût reçu*, etc.). With this we might compare our now old-fashioned 'If A had ejected B, then B had brought his action.' The past conditional or 'first form of the past conditional' (*j'aurais donné* etc.) seems to be for practical purposes a non-existing tense. (IX) A present conditional may follow a pluperfect subjunctive: 'If he had not been ejected, he would not complain.'—But we must give our examples.

I. *Present Subjunctive and Present Indicative.*—Si M. soit ousté, ele peut user l'assise. (If M. be ousted, she is able to use the assize.) Si jeo sey ousté, jeo suy disseisi. (If I be ousted, I am disseised.) Si nous seoms ousté de ceo bref, il covent qe Alice eit bref. (If we be ousted from this writ, it behoves that Alice have a writ.) Si la verité soit tiel com il dit, le bref est nouncertein et de nule value. (If the truth be as he says, the writ is uncertain and of no value.) Coment qe home en avowaunt die qe son tenant tient de li par divers services, sa avowrie put descendre sur un des services. (Although a man say in avowing that his tenant holds of him by divers services, his avowry can descend upon one of the services.) Si jeo ay ij. voies, list a moy de me prendre a quel jeo voderoi, e si jeo pusse voucher, pour taunt ne su jeo mye ousté de moun eide prier. (If I have two ways open to me, it is allowable for me to betake myself to whichever I please, and if I can vouch, I am not thereby excluded from my aid-prayer.) Si jeo eie deux recoverers le un ne me tout pas l'autre. (If I have two recoveries [=two means of recovering], the one does not deprive me of the other.) Il ne poet jammès rien demander come heir s'il ne peusse mostrer title de plus tardif temps. (He can never demand as heir if he be not able to show a title from some later time.)

II. *Present Subjunctive and Future Indicative.*—Jeo pose qe ij. soient joyntement feffez e l'un soit enpledé soul et out [eit?] fait defaute après defaute issint qe les tenemenz seynt a perdre, et l'autre . . . veigne et voille le bref abatre, il ne serra pas a ceo receu. (I put case that two be jointly enfeoffed and the one be impleaded alone and have made default after default so that the tenements be on the point of being lost, and the other come and desire to abate the writ, he shall

not be received to that.) Si rente secke me seit due par les mains de divers tenanz et jeo sei disseisi, jeo n'averai mie l'assise. (If a rent seck be due to me by the hands of divers tenants and I be disseised, I shall not have the assize.) Si ele soit destreinte par vostre defaute, vous serretz destreint de jour en autre tanqe vous l'eietz aquité. (If she be distrained by your default, you shall be distrained from day to day until you have held her harmless.) Si les tenemenz ne seient de vostre fee et de vostre seygnurie, vous n'avendrez a nule assise. (If the tenements be not of your fee and your seignory, you will not get to an assize.) Si tenemenz seient donez a W. Herle et as heirs de son corps engendrez et il eit xx. femmes et de la dreyne femme eit issue, le fitz serra enherité et la femme avera son dowere. (If tenements be given to W. Herle and the heirs of his body begotten and he have twenty wives and have issue by the last wife, the son shall inherit and the wife shall have her dower.)

III. *Imperfect Subjunctive and Present Conditional.*—Si vous feussetz receu a trier la cause de la bastardie en ceste court, issint ne serroit jamès bastardie trié. (If you were received to try the cause of bastardy in this court, at that rate no bastardy would ever be tried.) Si nous ussoms la chartre, nous vous osterioms de la excepcion. (If we had the charter, we should oust you from the exception.) Si nous voussissoms dedire le record, vous ne porriez mye estre partie de voucher record. (If we desired to contradict the record, you could not be a party to a voucher of the record.) Si la fin fust levee . . . la par cas nous ne avenderioms mie a l'averement. (If the fine were levied . . . then perchance we should not get to the averment.) Si jeo portasse bref de garrantie de chartre devers vous et demandasse la garrantie et meisse avant le fet vostre auncestre, ceo ne serreit mye respouns. . . . (If I brought my writ of warranty of charter against you and demanded the warranty and put forward the deed of your ancestor, it would be no answer. . . .) Si jeo countasse de ma seisine demeine e vous meissez avaunt la quiteclamaunce un estraunge, ceo ne serreit mye respouns a moy. (If I counted on my own seisin and you put forward a stranger's quitclaim, that would be no answer to me.) Si vous feussez receu a cel averement que vous feustes tous jours seisi, ceo serroit en voidance de la fyn. (If you were received to this averment, namely, that you were always seised, that would be in avoidance of the fine.) Jeo pose qe nous fuissoms chacé . . .

et nous deissoms . . . et pays deist, ... vous ne pr*en*derez [prenderiez] rienz mès s*er*rietz atteint. (I put case that we were driven to do so and so, and we said so and so, and the jury said so and so, you would take nothing, but would be attainted.) Si l'enqueste dem*or*ast nient pris, l'enqueste irreit a dieu sanz jour. (If the inquest remained untaken, the jurors would be bidden farewell for good and all.)

IV. *Imperfect Subjunctive and (apparently) Future Indicative.*—Je pos q*e* vous dereinasset la garde de corps J., uncore dereinneret vo*us* p*as* les s*er*vices q*e* su*nt* cause de la garde. (I put case that you dereigned the wardship of the body of J., still you would not dereign the services which are the cause of the wardship.) Tut alegisset vous seisine de plus haut qe vous ne feistes, jeo vous chaceray. . . . (Although you alleged a seisin higher than you did allege, still I should drive you. . . .)[1] Si no*us* fussoms enp*ledez* etc., vous s*er*retz lyé etc. (If we were impleaded etc., you would be bound etc.) Si nous fussoms empledez de vous, nous vous rebot*er*oms.[2] (If we were impleaded by you, we should rebut you.) Si la court agardast qe nous vous deussoms acceptier . . . nous serroms forclos de la r*ever*cio*un*. (If the court adjudged that we ought to accept you . . . we should be foreclosed from the reversion.)

V. *Imperfect Subjunctive and Imperfect Subjunctive.*—Si nous fussoms en cas de voucher . . . no*us* vo*us* liasoms. (If we were in a case of voucher . . . we should bind you.) Si vo*us* ussez fondeme*n*t, vous deissez bien. (If you had a foundation, you would say well.) Si nous att*or*nassoms, nous perdissoms . . . (If we attorned, we should lose.) Si jeo fuisse come Will*iame*, jeo suffrisse bien la fyn. (If I were in William's place, I would gladly suffer the fine.) Si jeo deisse . . . jeo abatisse mon bref. (If I said so and so, I should abate my writ.) Si nous fuissoms enpledé de un estraunge, nous vouchassoms n*ost*re feffour et il vouchereit Marg*er*ie.[3] (If we were impleaded by a stranger, we should vouch our feoffor, and he would vouch Margery.)

VI. *Present Conditional and Present Conditional.*—Si home s*er*reit receu en tiel cas, ja ne avendereit home a jug*ement* sur

[1] On the whole our evidence seems to point to the conclusion that *jeo chaceray* is a conditional.

[2] This is an instance of the many passages in which a conditional could be obtained by an editor who felt himself free to read as *eri* the usual sign for an omitted *er*.

[3] This illustrates the practical equivalence of the two tenses.

verdist. (If a man should be received in such a case, then one would never get to judgment upon a verdict.) Si comune serroit appendaunt, coment se freit l'amesurement? (If the common should be appendant, how would the admeasurement be made?) Mès si ore la femme recovereit, ele recovereit al oeps l'enfant. (But if now the woman should recover, she would recover to the use of the infant.) Si nous vodrioms graunter ceo dreit par fyn, si dirreit la fyn . . . (If we should desire to grant this right by fine, then the fine would say . . .)

VII. *Perfect Subjunctive and Present, Perfect, or Future Indicative.*—Si le gardeyn eyt aliené . . . le heir ad soun recoverir. (If the guardian have alienated . . . the heir has his recovery.) Si vous ne ly eietz la rente paié vous luy avetz greignour tort fait. (If you have not paid him the rent, you have done him the greater wrong.) Si homme eit recovery un aunuyté qe luy soyt due . . . il avera tous jours execucion après les termes . . . tauntqe l'aunuyté soyt esteint. (If a man have recovered an annuity which is due to him, he shall have execution after every successive term until the annuity be extinguished.) Si vous eiez purchacé . . . vous enyoyerez jammès qe poy de la comune. (If you have purchased [certain tenements], little of the common will you ever enjoy.)

VIII. *Pluperfect Subjunctive and Pluperfect Subjunctive.*—Si le bref eust esté porté vers le baron et sa femme . . . il eussent perdu les tenements. (If the writ had been brought against the husband and his wife, they would have lost the tenements.) Si vous eussez presenté, vous eussez esté en possessioun. (If you had presented, you would have been in possession.) Berr. al attorné. Si vous ussez tenu a vostre premer respons, vous ussez alé a la prisone. (Bereford to the attorney. If you had held to your first answer, you would have gone to gaol.) Jeo pose qe nous eussoms dit q'ele ne feut my sa femme au temps de la mort son baron et ele eust dit quod sic, par quei eussez eu bref al evesque, le evesqe n'eust mye certefié qe . . . (I put case that we had said that she was not his wife at the time of her husband's death, and that she had said that she was, and that therefore you had had a writ to the bishop, [then in that case] the bishop would not have certified . . .) [Si] il eussent fait ceo q'il dussent avoir fait de ley, il ussent agardé fors un destresce de qei vous ne ussez pas essté endamagé. (If they had done what by law they ought to have done, they would only have

awarded a distress whereby you would not have been damaged.) Si vo*us* eussez tue q*aun*t vo*us* [vous] meistes en enqeste, vous ne eussez esté barré. (If you had held your tongue when you put yourself on the inquest you would not have been barred.) Si nostr*e* aunc*estre* ust pris relès de cely qy dona, ne ussoms poynt eu nostre recover*ir* ? (If our ancestor had taken a release from the donor, should we not have had our recovery ?) Si vous ussez p*or*té bref . . . e ussez ussee [=et eussiez usé] la ch*ar*tre et puis usset esté forjugé, jamès pus ne ussez avenu . . . . (If you had brought writ . . . and had made use of the charter and afterwards had been forejudged, never afterwards could you have attained to . . . .) Le quel de eaux ij. eust esté en court en pr*o*pre p*er*sone eust eu ava*un*tage, qar si G. y fust sa*un*z coe qe R. eust esté pr*ei*st a faire homage, G. eust eu retorn, et si R. y fust et G. nent, R. eust eu sa vache quites. (Whichever of the two had been in court in proper person would have had advantage, for if G. had been there and R. had not been ready to do homage, G. would have had a return [of the distrained cow] and if R. had been there and G. had not, R. would have had his cow quit.)

IX. *Pluperfect Subjunctive and Present Conditional.*—Si le Roy ne ust pas granté a nous etc., il avereit la garde. (If the King had not granted to us etc., he would [now] have the wardship.) Si Joh*an* ust entré deinz age et ust esté osté, il av*er*oit son recov*erer* del enteir. (If John had entered while under age and had been ousted, he would [now] have his recovery of the whole.) Mesqe nous eussoms dit qe nous eussoms enquis, vous ne serrietz p*as* rec*e*u a dire q'il enquist point. (Although we had said that we had made inquest, you would not [now] be received to say that he [our client] made no inquest.)

No doubt a good many blunders in syntax were made by the original reporters, and the number of mistakes was largely increased by drowsy or ignorant copyists. The following may be taken as a fair specimen of the longer sentences. The transition from the indicative to the subjunctive in the process of 'putting a case' will be observed, and on the other hand it will be seen that the writer is one of those who distinguish the preterite from the present of the verb *tenir*. We give this example, for the endeavour to parse a sentence in the Year Books has not been made too frequently :—

La ou br*ef* de dette est porté [pres. ind.] v*ers* un ho*m*me,

puys il aliene [pres. ind.] ten*emenz* q'il tynt [pret. indic.] j*our* de br*ef* p*ur*chacé, e puis le vic*ounte* respo*unt* [pres. ind.] q'il n'ad [pres. ind.] do*unt* e*stre* destr*eint*, e le pleyntyf vyegne [pres. subj.] en *curt* e face [pres. subj.] sa suggestio*un* q'il avoit [imperf. ind.] t*erres* e ten*emenz* j*our* du br*ef* p*ur*chacé, le defenda*unt* serra [fut.] mené en *curt* p*ar* les issues de cele *terre*, e si le def*endaunt* vyegne [pres. subj.] et conusse [pres. subj.] ove le pleyntyf la dette, la exec*ucion* se fra [fut.] de ceus t*erres*, tut respoigne [pres. subj.] le vic*ounte* faucem*ent* com a dire q*e* un tiel t*ient* [pres. ind.] ceux ten*ement*s qe fur*ent* [pret. ind.] en la s*ei*sine le def*endaunt* j*our* du br*ef* p*ur*chacé e ceo tende [pres. subj.] de averer.

With a fairly long exercise in the use of the imperfect subjunctive and the present conditional we will end our examples of Year Book grammar :—

Herle. Ce ne gist mye en v*ostr*e bouche a dire, qar no*us* pos*oms* qe l'aver*e*ment qe v*ous* tendez se joynsit entre nous, et l'enqueste chauntast p*ur* no*us*, et celi Rog*ier*, de qi vous dites q*e* v*ostr*e pere tient [1] p*ar* eygné feffement, portast autiel br*ef* v*er*s no*us*, [le] [2] jug*ement* q*e* s*er*reit ore doné p*ur* no*us* ne vaudreit point, einz covendr*eit* joyndre enqueste de novel, qe porreit passer encontre no*us*, et issint s*er*reit la p*ri*mere enqueste tut en veyne, et le dr*eit* qe no*us* s*er*reit agardé par un jug*ement* no*us* s*er*reit tollet [=tollé] [3] p*ar* un autre, qe s*er*reit inco*n*venient.

One other usage there is to which a modern reader's attention may be profitably directed : namely, an extremely liberal employment of reflexive forms. In one of the extracts just given the phrase *la execucion se fra* may have been observed. This merely means 'the execution will be made.' It was rare to say that men levied a fine or that a fine was levied ; the regular phrase, if literally translated, told that the fine levied itself (*se leva*), and this device, convenient among people whose language had lost the passive forms of the Latin verb, affected the Latin of our records, so that *finis se levavit* became common. Then a judgment will be said to carve itself, or shape itself, or formulate itself in the right (*se tailler en le dreit*) : in other words, the judgment is so shaped that it affects, not mere seisin, but proprietary

[1] For this clerk *tynt* and *tient* are alternative forms of the preterite.

[2] The article is not absolutely necessary, but is inserted to bring out the sense.

[3] From the verb which represents Latin *tollere*. The *t* at the end of the passive participle is not common, but this clerk writes *tollet* more than once.

right. In turning these phrases into English we must use our passive forms. When, to take a more questionable example, we read that *le ordre du Temple se defist*, it is extremely doubtful whether this implies the untruth that the Order dissolved itself: it was dissolved, it was undone: that is all. As is rightly reported in another case, 'le ordre du Temple en consaille general par l'Apostoille fut defet.' So it is often said that a writ abates itself and that a right vests itself in somebody's person. This may tell us that the writ is knocked down and that the right is dressed up, but imputes no activity to writ or right. That Frenchmen once exercised greater liberty in the use of reflexives than that which they allow themselves at present is recorded by grammarians.

Of the vocabulary it seems needless to speak, at any rate upon the present occasion. Infinitely the greater number of the words that come before us are either very common French words or else have long ago become English. A few remarks may meet some practical difficulties.

Besides the *ou* which means 'or' (L. *aut*) and the *ou* which means 'where' (L. *ubi*), we shall sometimes see in manuscript an *ou* which means 'with.' This is one of the forms assumed by the protean word which represents the Latin *apud*, and which in Modern French has been supplanted by *avec*, the representative of *apud hoc*. This *ou* we print as *ov*. Yet a fourth *ou* which is a contracted form of *en le* may occasionally be seen.

Besides the *si* which means 'if,' we shall see the *si* which represents the Latin *sic*, and it does a good deal of work. It may stand for our 'yes,' when our 'yes' introduces other words. When Herle says *Ceo n'est mye encountre ley*, Bereford contradicts him with *Si est* ('Yes, it is'). Then sometimes this *si* may be rendered by 'therefore.' It occurs in wellnigh every avowry and every judgment (*Pur ceo qe . . . si avowe il la prise etc. Pur ceo qe . . . si agarde la court etc.*), and it here gives prominence to the principal verb of a composite sentence. But often it must remain untranslated, its only function being that of slightly strengthening an affirmation. Thus 'This avowry sins against common law' appears as *Ceste avowrie si pecche encountre comune ley*. Again, 'What we allege is matter of law' appears as *Ceo qe nous alegoms si chiet en ley*. Perhaps the reader will not at once grasp the meaning of the following sentence:

Jeo vous moustre qe si qe excepcioun est doné.

Here the *que si* is equivalent to *quod sic*, and the second *qe* does the duty of *quia*: 'I show you that it is so, for an exception is given.'

Besides *estre*, the well-known infinitive, there is an *estre* which is a preposition representing the Latin *extra*. You may say *touz estre la persone* for 'all except the parson.' It is common to begin a sentence with *Estre ceo*: a phrase which may be rendered by 'Besides,' 'Moreover,' 'And again.' As a beginning of sentences it alternates with *D'autrepart*, and on neither phrase should the reader lay much stress, or, if he does so, he should remember that an advocate is often desirous of apparently introducing a new argument when really he is only going to repeat what he has already said. This *estre* in some contexts approaches very near to the *outre* which descends from *ultra*, and it may be worthy of remark that the English 'over' in such technical phrases as 'with divers remainders over' and 'he had to answer over' is our substitute for this French *outre*. In jargon of the worst period we may read of 'a judgment of *respondeat ouster*.' Here the *ouster* exemplifies two bad English habits: the conversion of *-re* into *-er* and the admission of an unwarrantable *s*. This disreputable *ouster* has, it need hardly be said, nothing to do with the highly reputable *ouster* which is our old form of the modern verb *ôter*. We may render *Responez outre* by 'Answer over.' At the present day, however, we should say: 'You must put in a further answer.'

Besides the *einz* which derives from *intus*, there is an *einz* which may be ultimately traced to *ante*. The former in composition gives us *deinz* (M.F. *dans*), *ceinz* 'herein' or sometimes simply 'here,'[1] and *leinz* ('therein'). The uncompounded word is used for 'in' when a lawyer uses 'in' without a subsequent noun, as when he says 'John was in (*einz*) as tenant for life.' The opposite to this *einz* is *hors*, and in medieval law much indeed depends on the question whether you are *einz* or *hors*, in or out. The other *einz* means 'before;' thus *einz cez houres* means 'before now.'[2] Then it may also mean 'but rather' or merely 'but,' and is interchangeable with *mais*. This said, we may face the following bit of dialogue:

> Pass. Après la mort Henri si entra mesme celuy Thomas com fitz et heir, et einz est com heir.
>
> Malm. Nent le fitz Henri einz le fitz William.

We render the first *einz* by 'in' and the second by 'but,' while the *si* may go untranslated.

[1] You say that a fine was levied *ceynz*: that is 'here,' 'in this court.'

[2] In the French of France it was *ainz* or *ains*. It lies at the root of *aîné*,

There are three or four common verbs to which the reader's attention may be asked. He knows how a writ 'issues' and 'runs,' and how an action 'lies.' He will therefore be prepared for the use that is made of *issir* and of *courir* (or rather *coure*), and of that *gesir* which still lives among us in 'the gist of the action.' But a note may be due to *tailler* (to cut), *cheoir*, *cheir*, or *chere* (to fall), which comes from the Latin *cadĕre* or *cadēre*, and *lier* (to bind). Starting from the notion of cutting and carving, *tailler* is freely employed whenever there is contriving or formulation. Where we 'limit' a remainder, our ancestors would 'tail' a remainder. A judgment for damages was a judgment which 'tailed' itself in damages. An issue was 'tailed' between the parties when they had settled the question that was to be laid before a jury. A new statute 'tailed' a new remedy. Then where we say 'this is a matter of fact, of law, of evidence, of record,' our forerunners said *Ceo chiet en fet, en ley, en evidence, en record.* They said *Ceo plee chiet en la possessioun* where we should say 'The plea is possessory.' And then we observe a technical use of *lier* which is closely akin to the technical use that we make of our English 'to lay,' when 'damages are laid at 100*l.*,' when 'the property of the goods is laid in the bailee,' and when 'the venue is laid in Middlesex.' When you are avowing a distress for rent arrear, you are required to *lier* the seisin of the rent by the hand of your very tenant. When counting on a writ of right you are required to *lier* the esplees in one of your ancestors. The idea thus expressed seems to be that of attaching and fixing. In these contexts the French *lier* so naturally translates itself into our 'to lay' that we can hardly avoid the guess that we should not now be 'laying' damages and property and venue, had it not been for the similarity between *lay* and *lier*.[1]

We have been giving our readers an opportunity of judging by sample the quality of the French that appears in these manuscripts. Their judgment we will not endeavour to anticipate; but we fancy that the more learned they are, the more lenient it will be. For a moment the inconsequential and capricious treatment of the final *e* will create a bad impression on their minds, and incline them perhaps to speak of 'kitchen French,' 'pigeon French,' or even of 'dog French.'

[1] It should be remembered that as a termination *-ler* often takes the place of *-lier*, as in *chivaler*. It is not unlikely that the participle *lié* sounded much like *lé*. A learned friend suggests that our lawyers caught hold of *lier* because of its similarity to the English *to lay*. But we should guess that the French phrases (*lier la seisine* etc.) are older than any technical use of the English verb.

But they will remember that the fourteenth century is described by historians of the French of France as a somewhat anarchical time when 'the old language' with its two cases was breaking up and 'the new language' was but beginning to take shape. They will remember also that just in this matter of the final *e* Modern French shows a good many instances which are not found in the old language, and which are due, not to normal phonetic development, but to analogy.[1] If there was liberty at Paris, there was likely to be licence at Stratford and Westminster. And at any rate we shall have to admit that with all its faults this Anglo-French enabled our lawyers to think out a system of rules which sinned rather on the side of subtlety than on that of rudeness, and to develop a scheme of technical concepts which was durable enough, and, it may be, but too durable. The language which did this deserves respectful treatment.

One word more. At the time of which we speak the English lawyer was a man of three languages. No one can have hoped for success at the bar without Latin as well as French. The statutes, the records, the private instruments that the English lawyer would have to expound were written in Latin, and a false concord in a writ was in his eyes a serious matter. Indeed we may say that Latin still supplied him with many of his terms of art. For example, he might have to say 'Le *precipe quod reddat* ne gist pas vers le seignour et ne pooms user le *quod permittat*.' We see, too, that Latin is very near the pen of our reporters. They are wont in particular to give in Latin what we may call the stage directions which accompany the reported dialogue, so that a 'quasi diceret quod sic' or a 'quasi diceret quod non' will indicate the tone in which a question was asked. And so we see 'Ad alium diem,' 'Et sic ad patriam,' 'Et sic adiornatur,' 'Herle recitavit placitum et dixit . . .,' 'Bereford dixit secrete . . .;' and when the motives of a judge or a pleader are to be explained this is often done in Latin.[2]

Let it be that the Latin and French were not of a very high order; still we see at Westminster a cluster of men which deserves more attention than it receives from our unsympathetic, because legally uneducated, historians. No, the clergy were not the only learned

[1] There must, for example, have been a time when a writer had his choice between *grande, forte, telle* and *grand, fort, tel* as feminines; between *je chante* and *je chant*; between *qu'il chante* and *qu'il chant*.

[2] Sometimes we see a curious jumble. One clerk often writes *eo qe* instead of *pour ceo qe*. Apparently he gets his *eo* from the *pro eo quod* of Record Latin.

men in England, the only cultivated men, the only men of ideas. Vigorous intellectual effort was to be found outside the monasteries and the universities. These lawyers are worldly men, not men of the sterile caste ; they marry and found families, some of which become as noble as any in the land ; but they are in their way learned, cultivated men, linguists, logicians, tenacious disputants, true lovers of the nice case and the moot-point. They are gregarious, clubable men, grouping themselves in hospices, which become schools of law, multiplying manuscripts, arguing, learning and teaching, the great mediators between life and logic, a reasoning, reasonable element in the English nation.

IV. Of this Edition.

Returning now to the point whence we started, we must describe our own procedure. Our primary rule must be to choose a manuscript and to copy it letter by letter, though *u* and *v* and *i* and *j* will be dealt with in conformity with modern practice, and the punctuation and use of capital letters will be our own. Then as regards mere matters of spelling we shall leave our text as it stands, even though we think that the shape which it gives to a word is a distinctly bad shape and one that hardly fell within the limits of permissible variation. Thus we know a clerk who frequently wrote *chartir* instead of the common *chartre*. We shall leave *chartir* unamended. For aught we know, it may be an interesting form, and if we once began to amend bad spelling we should not know where to stop. When, on the other hand, there seems to be any danger that a reader will take one word to be another, then, giving express notice, we make a correction. Thus we turn *ces* into *ses* when *ces*, as is often the case, stands for 'his,' but a note will state that the manuscript gives *ces*. This we do because a reader who sees *ces terres* or the like will be inclined, at least for a moment, to mistranslate the phrase. Then when our manuscript gives, not an ill-spelt word, but what we take to be a wrong word, we shall give both right and wrong. For example, there is a clerk who on more than one occasion writes of the Order of the Charity (*charité*) of the Temple. We hold it for certain that he has blundered in the expansion of an abbreviated word (*chre*) and shall put *chevalerie* (knighthood) in our text and *charité* in our notes. But we shall not even in our notes endeavour to amend bad accidence, still less bad syntax, unless it is unintelligible. We have twice seen *la pape* (the pope) : it is needless to express our opinion that *le pape* would be better. We do not like *vindreient* as an equivalent for

'they came:' but, though it looks like a conditional, it seems really to be a hybrid, born of the two words which in modern French are *venaient* and *vinrent*, and it may testify to a reduction in the number of the living tenses which was becoming a mark of our curial French.

The supply of variants from manuscripts other than that which we copy must needs be small if progress is to be made in our task within a reasonable time and at a moderate cost. It would be easy to find two or three variants for every third word or thereabouts, and a society, which had for its object the elucidation of the Anglo-French language, might do worse than publish just a few Year Books with all obtainable variants. But Edward II.'s reign looks long to one who yet stands at its beginning, and beyond are other reigns. All that one of the Selden Society's editors would be justified in doing as a general rule is, so we think, to give variants which seem to him to alter the legal complexion of the case.[1] Of the material variations between different manuscripts, and especially of the instances in which we have two apparently independent reports of one discussion, we may have an opportunity of speaking in another Introduction. About this matter there is a good deal to be said.

Then, as to the risky process of filling in the omitted parts of words, we must do our best to write what we believe to be the missing letters. From the scientific but expensive process of distinguishing those letters by italic type we are compelled to shrink. We will make a serious endeavour to discover the usages of the scribe who wrote what is for the time being our main manuscript. We will try to ascertain whether he inclines to *-an* or to *-aun*, to *-on* or to *-oun*, to *-ur* or to *-our*, to *-ter* and *-ler* or to *-tier* and *-lier*. But it must be confessed that in many cases no sure result has been obtained, and inferences are perilous. It does not follow that a man will write *soun* instead of *son* because he writes *noun* (L. *nomen* or L. *non*) instead of *non*. And when it comes to subsidiary manuscripts it will be hard for an editor to remember, even if he have once mastered, the private usages of a given scribe. Thus, so far as mere spelling is concerned, the limit of our hope will be that we keep within the range of permissible variation and do not depart very far from the habits of the writer whose work we profess to reproduce. That some, and perhaps many, mistakes will be made in this operation is not doubtful, but they ought not to be mistakes which pervert the facts or the law.

[1] A little more than this has been done on the present occasion. We must plead guilty to a charge of an irregular supply of variants. We had to learn our business by experience.

Real danger begins when the editor must conjugate a verb. Whenever we are conscious of a danger of anything that is worse than bad spelling—in particular of a wrong tense—our added letters will be placed within brackets. Fidelity with a leaning towards correctness should be our aim. We must not strain the stenographic signs in order to obtain pleasant results. For example, we think that we have warrant for holding that *au' et ten'* may be read as *avoir et tenir*, though the sort of hook is drawn that usually represents *er*; and, on the other hand, when that hook appears in the middle of *auoms*, we have not felt able to expand this into *eri*, even though we should like *averioms* better than *averoms*.

What we mean by a leaning towards correctness may be illustrated by the verbs that are too often represented by *rec'*, *gar'*, and *r'*. The correctness should be an Anglo-French correctness. As at present advised, we should never write *nous recoverons*, but always *nous recoveroms*. But as between *recoverer* and *recoverir*, *il recovera* and *il recovery*, and so forth, we shall incline towards the first conjugation. And this upon the ground that, while the English usage was unsettled ('nous recover*a*mes' and 'vous recover*i*stes' have been seen in the closest proximity) the Latin verb was *recuperare* and the French verb is *recouvrer*. It is with some qualms that we take *gar'* to represent a 'regular' verb of the second conjugation; but such direct evidence as we have seen is not decisively against a *garauntir* with inchoative forms, and this was the verb that flourished in France. Then of *r*[*espoundre*] we rarely see more than the first letter. What we do see is not wholly in favour of our imitating the modern conjugation of *répondre*. Men said *nous responoms* for 'we answer,' and *vous responez* for 'ye answer;' also the future and conditional tenses were sometimes represented by such forms as *il respora*. The difficulty of distinguishing *r*[*eceu*] and *r*[*espondu*] is sometimes very considerable. Pleaders crave judgment whether a plaintiff ought to be answered to this writ (*si a ceo bref deive il estre respondu*) and whether a litigant ought to be received to such an averment (*si a tiel averement deive il estre receu*). Happily, in this puzzling context, the two words practically mean almost the same thing. Then the *r'* which stands for *resoun* (M.F. *raison*) and the *r'* which stands for *respouns* or *respounse* are not always to be distinguished. In all these matters we shall, by the use of brackets, try to give the reader a fair opportunity of judging how defective is the editor's knowledge of old French and old law.

In the matter of graphic accents we shall endeavour to follow the

example that is set by French medievalists of repute.[1] It need hardly be said that graphic accents are not to be found in our manuscripts, and there seem to be ample reasons why no attempt should be made to impose upon medieval materials all or nearly all the accentual signs which were introduced by the grammarians of the sixteenth and later centuries. But the accent placed upon a final *e* or final *es* stands by itself. In our reading of French books we have learned to rely upon it so strongly, and to take such heed of its presence or absence, that our apprehension of the meaning of a word is appreciably retarded if we fail to receive our ordinary guidance. The first three accents on *régénéré*, the first two on *légèreté*, may be luxuries, but the last accent in each case is a necessary if we are to read quickly. In a very large class of cases the word which bears such an accent will still be a word, but another word, when the accent is omitted. Coming casually upon *porte* we do not recognise it as the passive participle *porté*. Coming casually upon *le feffe* or *le vouche* we do not recognise them as our old friends the feoffee and the vouchee. The repellent effect of the old black-letter books is, to our minds, perceptibly increased by the appearance of such nouns as *abbe*, *cite*, *moyte*, *prive*, *atorne*, *verite*, *equite*, *bove* (meaning 'bovate'), and *carue* (which sometimes means 'plough' and sometimes 'carucate'). A little stroke makes a great difference. A reader might be puzzled for a moment by this phrase —'Il counte que le counte ad counté un counte vers luy en le counté.' But, at any rate, this is more intelligible than 'Il counte que le counte ad counte un counte vers luy en le counte.' This example, which is intended to mean 'He counts that the earl has counted a count against him in the county, *i.e.* in the county court,' is an imaginary one, and we cannot abolish the unfortunate fact that *counte* may represent the *conte* or the *comte* of Modern French; but we can mark off from other cases those in which it represents *conté* or *comté*, and sends us back to *comput-atum* and *comit-atum*.[2] To take a real example, the phrase *et issi ne put le fet jammes estre barre* may mean that the deed can never be a bar or that it can never be barred: all depends upon the manner in which the reader mentally pronounces a final *-e*. It is well for us to remember that a fee tail was a *fee taillé*,

[1] M. Paul Meyer's edition of Bozon's moral tales seemed to be the precedent that was most directly in point. The tales are written in an Anglo-French which stands a few degrees above the level of the Year Books.

[2] When writing the above we were not aware that some schoolmaster of the fourteenth century had in some sort anticipated us. He, as we understand him, teaches that in the phrase *un counte counte del Count de tiel Counte* it is well to use capital letters to prevent misunderstandings. See Orthographia Gallica, p. 26.

and that the 'charge' of 'rent-charge' was once a passive participle. How far men were from our modern pronunciation of 'rent-charge' is shown by an occasional occurrence of *une rente chargee*.

If we deal thus with a final *e* we must similarly deal with a final *es*. We shall therefore distinguish *portés* from *portes*. But what of a final *ez* or *etz*? The word *portez* (or *portetz*) in our manuscripts may be, as in Modern French, the second person plural of the present indicative of the verb *porter*, or it may be the plural of the passive participle, which is now written as *portés*: in the one case it stands for the Latin *portatis*, in the other for the Latin *portatos*. As an equivalent for *portatos* our clerks will commonly write not *portes* but *portez*; but the *-es* sometimes takes the place of the more normal *-ez*, and we may see the two forms in close proximity:—*les feines fauches et enportetz* (hay cut and carried away). After fluctuations of opinion, we have decided to put no accent on the final *ez* or *etz*. Our reason for making any use of accentual signs is to warn the reader that he must not allow a certain *e* to become an *e* feminine or an *e* mute. But probably he will be under no temptation to treat the *e* of a final *ez* in this manner. A highly beneficent, if arbitrary, convention has decided that in Modern French the masculine plural of the participle is to end, not in *-ez*, but in *-es*, and that *-ez* is to be the almost infallible sign of second persons plural. As such we know it, and the *z* seems to tell us that the *e* is not feeble. Also we see no accent written over *nez* (nose) and *assez* (enough). Moreover, if once we begin to write accents over the *-ez* of our participles, it is hard to find any reason for not putting an accent over the *-ez* of the second person plural, and some masters of medieval lore will put it there.[1] Against their procedure far be it from us to say a word; but on the whole it seems to us that such forms as *vous portéz*, *portiéz*, *porteréz*, however scientific they may be, would be more likely to perplex than to assist the readers whom we would attract to the Year Books. Consequently with us it will only be words terminating in *e* or in *es* that will bear a graphic accent. We shall write *les feines fauchés et enportetz*. On the other hand, when, as occasionally happens, we find in our manuscripts a final *-es* where in Modern French we should find a final *-ez*, we shall then place an accent on the *e*. Thus, if we find *vous portes*, we shall write *vous portés*, and if we find not *assez*, nor *assetz*, nor *assets*, but *asses*, we shall write *assés*.

At the same time it must be stated that in our manuscripts the *e* in the final *ez* may occasionally be an *e* of the obscure or feminine kind.

[1] See the carefully transcribed text in Darmesteter's Grammar, p. 166 ff.

For some of our scribes the character *z* seems to be losing all suggestion of *ts* and to be degenerating into a mere way of writing a final *s*. Witness *sez terrez* (his lands) and the like. Perhaps it is in order to preserve the sound of a *t*, which a mere *z* no longer preserves, that we so often see the second person plural ending in *-etz* or simply in *-et*. Some clerks are more careful than others over this matter. As will be seen from the above table of verbal forms, they know that the preterite differs from other tenses in having *-es* and not *-ez* at the end of the second person plural, and the three well-known exceptions—*vous êtes*, *vous dites*, *vous faites*—already stand out in bold relief in the present tense. Still, when we meet, as occasionally we do, with *vous estez* or *vous ditez*, we cannot be certain that the writer did not pronounce these words as others pronounced what they wrote as *vous estes* or *vous dites*. At any rate the reader of this book takes it with express as well as constructive notice that *terres* may appear as *terrez*, and that therefore the subsequent *z* gives no absolutely decisive clue to the value of the precedent *e*. A little encouragement in learned quarters would induce the editor to treat the *z* in such instances (e.g. *terrez*, *fillez*, *personez*) as one of the forms in which a final *s* may be written, and to substitute for it the usual shape of the letter.

We come to the cases in which a modern Frenchman ends a word with *-ée* or *-ées*. Now, as already said, a double *e* at the end of a participle is in these manuscripts no index of gender. Very often it is serving the purpose of the accent on the single *é* in the modern language. It merely warns a reader that the vowel-sound required of him is not the evanescent *e* feminine. Whether in a given case it means more than this, whether the *nee* in *ele fut nee* is precisely like the *nee* in *il fut nee*, we do not decide: careful students of Anglo-French poetry tell us that these two terminations (*-é* and *-ée*) rhymed freely with each other. The object of the second vowel is attained if we avoid the sort of sound that is indicated by *ne* when it means 'not.'[1] And so, to turn away from participles, we may find the double *e* in *pree*, *gree*, *blees*, or *bleez*, *degree*, and may yet pronounce these words as *pré*, *gré*, *lés*, *degré* are pronounced to-day. We may see it also in *fee*, in *plee* (M.F. *plaid*), in *pee* or *piee* (M.F. *pied*), in *pees* (M.F. *paix*), in *espleez* (M.F. *exploits*), in *lees* and *relees* (made from the verb which Frenchmen

[1] A good example may be given from a late statute; it will incidentally illustrate also the abuse of the letter *z*: namely, *lez ditz droitz, droiturez, privilegez; liberteez, fraunchisez, immuniteez*: this is equivalent to *les dits droits, droitures, privileges, libertés, franchises, immunités*. (Statutes, Commissioners' ed. ii. 460.)

spell as *laisser*).[1] These examples may be enough to suggest that the desired sound was not always the same; but one sound is put out of the question: namely, the sound of the *e* in *le*, *me*, *te*. Therefore without any accent we shall write *il fut nee* and *ele fut nee*, *il fut emprisonee* and *ele fut emprisonee*. Without any accent we shall write *pree*, *gree*, *blee*, and so forth; but if we come upon *pre* meaning meadow, or *ble* meaning corn, we shall put an accent upon it.

We shall encounter a few words terminating in *-es* which in modern times bear a grave accent on their last syllable; the *e* here derives from the 'stopped' *e* of the Latin termination *-essum*. We shall employ this grave accent, for it helps us in our reading. There is the very frequent *après* (Lat. *ad pressum*), and we may also find *decès* (decease), *procès* (process), *profès* (professed in religion). A somewhat difficult problem is presented to us by the cases in which the *-es* of our scribes is represented in the French of France not by *es*, *és*, or *ès*, but by *ais*. The chief instances are *mes* (Lat. *magis*, M.F. *mais*) and *james* (Lat. *jam magis*, M.F. *jamais*). We shall plead M. Paul Meyer's example for printing *mès* and *jamès*; also we shall print *lès* and *relès* for lease and release.[2] No doubt the use that we propose to make of the graphic accent gives an editor one more chance of disgracing himself; but this seems to be a risk which the convenience of his readers requires him to run. Sometimes when the text is bad and its sense dubious he can by one small stroke indicate what he takes to be its meaning, and the reader will know that accents, like commas, come from him.

The introduction of the apostrophe needs, so we think, no apology. It is desirable to distinguish, for example, the *cest* which means 'this' from the *c'est* which means 'that is,' and the *quele* which descends from *qualis* from the *qu'ele* which descends from *quod illa*. On the other hand, there seem to be good reasons for preserving *del* and *al* just as they are written by our scribes, whatever be the gender of the noun to which they lead. With strange frequency it has happened that, the vowel of the definite article (*le* or *la*) having been elided, the remaining *l* has detached and appropriated the *a* with which the next

[1] The French word for a legacy, namely *legs*, is in truth the same word as our 'lease.' The *g* in it is due (at least so some of the learned tell us) to mistaken etymology. See Darmesteter, Grammar, p. 225.

[2] Mr. Macaulay (Gower, p. xxiii) says that the Anglo-Norman *e* representing a French *ai* is in Gower's rhyme an open *e*: so that *pes* (M.F. *paix*), *mes*, *jammes*, *reles* rhyme with *apres*, *deces*, and not with the *-és* or *-ez* of participles. In modern English notation this *e* often becomes *ea*, as in 'peace,' 'feat,' 'lease and release.' This *ea* we do not see in our manuscripts. In later Anglo-French *peas*, *meason* are current.

word began: instances are *la peel, la voweson, la tourne, la postoyle.* Without express notice the editor may be suffered to restore the missing letter to its rightful owner, and the appeal, advowson, attorney, and apostolic bishop or pope will be once more visible.

A cedilla would rarely be useful. Instead of the modern *ça* our clerks wrote *cea* or *cza* or very frequently *sa,* and it may be well to explain that the oft-repeated phrase *Auxint par de sa* (*cea, cza*) with which an argument from analogy is clinched, can be equated with *Auxint de ceste part* and *Sic ex parte ista*: we translate it by 'So here' or 'So in this case.' In such a word as *purchaceour* the *e* is, we take it, in effect a cedilla, and *-our*, not *-eour*, is the representative of the Latin *-orem.* However, every now and then an occasion will arise when this modern sign will be useful: for example, we shall write *reherça.* On the other hand, an attempt to apply the trema would soon take us beyond our depth.[1]

Our translation is not meant to be literal. If, as sometimes happens, the French words might bear either of two meanings, we think it right, not to reproduce the ambiguity, but to decide in favour of one and against the other. Thus we may sometimes render a mere *il* by '[the demandant's father]' and a mere *vous* by 'you [the defendant's counsel].' Nor only this. We shall not scruple to construe *vous* by 'he' and *il* by 'you' if by so doing we can make the point clearer. The reader can see the original on the opposite page: our English version is no substitute for it. Also we shall frequently omit 'the said,' especially when translating Latin records, for, however proper its repetition may be in formal instruments, it is often a slight impediment rather than any aid to those who would quickly seize the point of the case. Further, we think it fair, and, if fair, expedient, to break up into short clauses the pleader's long sentence with its numerous relative pronouns. The pleader was bound, we may say, to make several different sentences look like one sentence. He traces the land to one Roger; then he is to say what Roger did; but, instead of pausing and using an *et,* he goes on with *qui quidem Rogerus* or *le quel Rogier.* As our readers can see for themselves how this device was managed, we shall not hesitate to introduce a stop and an 'and.' Occasionally we must face the dilemma of being too technical or not technical enough. It is impossible to fix a precise

[1] When variants are given in our footnotes we use neither accents nor the apostrophe, as sometimes it is necessary to lay stress on the exact shape that a word takes in the manuscripts. When, however, we cite several manuscripts for one variant, this does not imply that the agreement extends to spelling.

moment when *assez* begins to look like a substantive, and even a substantive in the plural number. Perhaps we shall meet the case if we render *Vous avez assez par descente* by 'You have enough [assets] by descent.' Lastly, if it seems to us that our notes give a better version than that given by our text, we translate the former and not the latter, and we rarely think it necessary expressly to call the reader's attention to this procedure.

We have ventured to place on the English pages some 'headnotes' of our own which should bring out in a few words what we take to be the legal interest of the cases. Our one object is to assist the reader. When we think that he will at once see the point of a short case, our note dwindles to mere 'catchwords;' it becomes longer if there is an obscure story or intricate argument. In the corresponding place on the French page will be found a note taken from the margin of our principal (or occasionally of some other) manuscript. These notes are often very rough and rude, and rarely deserve much attention. We have no reason to suppose that they proceed from the reporters, and to translate without greatly expanding them would be difficult.

The division of the 'Note from the Record' into two pieces, one of which appears on the French and the other on the English page, may be clumsy; but all other devices seemed even less convenient: that, for example, of stowing away these notes in an appendix, and that of leaving large blank spaces on the one page or on the other.

As we are at the beginning of what may be a long course, any suggestions as to the way in which the work should be prosecuted will be thankfully received and carefully considered. That work will soon pass out of the hands that are endeavouring to begin it; but if members of the Society will speak their minds, every volume of the Year Books may be better than the last.

So much as to our general plan. As to this first volume, our hope had been to include in it all the cases that the manuscripts ascribe to the first two years of Edward II.'s reign. That hope has not been fulfilled. We are compelled to reserve some cases of the second year for a second volume.

The manuscripts of which use has been made are the following:

A = Cambridge Univ. Libr. Ff. 3, 12
B = British Mus. Add. 35094 (Maynard's MS.)
D = Lincoln's Inn, 139
L = British Mus. Add. 25183

M = Cambridge Univ. Libr. Ff. 2, 12
P = British Mus. Harl. 835
Q = British Mus. Harg. 210
R = Cambridge Univ. Libr. Dd. 9, 64
X = Bodleian Libr. Tanner, 13[1]

These manuscripts differ from each other very widely, and no attempt has as yet been made to establish their pedigree. That task can only be undertaken when a much larger part of them than that which is devoted to the first two years of the reign has been examined, and, if it is ever to be brought to a satisfactory conclusion, it will require of an editor some years of unremitting application, for the total number of the manuscripts which will have to be considered before the reign is finished is large. At present we cannot say that we have found any eminently good manuscript: any manuscript so good that it can never be corrected by those which in most respects are its inferiors. If we are to suppose a single ancestor of the whole tribe, we do not think that we have seen him, and doubt whether we have seen any of his immediate progeny. We are provisionally inclining to the belief that brief notes were taken in court and that divers lawyers expanded or 'wrote up' these notes in different ways, so that no one archetypal text ever existed, or, to put it in other words, so that the archetype was a grammarless string of abbreviated words. Then, as the different manuscripts present the cases in very different order, it seems certain that some large dislocation has taken place, and not improbably we ought to think of the original material as consisting of small pieces of parchment which easily fell into disorder. So deep is the disagreement that we are compelled to print all the cases which seem to belong to the second year without drawing any lines which would mark the beginnings and ends of the terms.

Our text is a transcript of *A*. This Cambridge MS. is closely related to *B* (the Maynard MS. which was the foundation of the Vulgate) and to *D* (the Lincoln's Inn MS. which was praised by Hale). Every one of these MSS. is occasionally better than the other two put together. In choosing a member of this family as our principal guide we have perhaps been unduly conservative; but the

[1] We have chosen this Oxford manuscript as a specimen of a class which gives very concise reports. Whether these reports should be spoken of as 'condensed' or as 'unexpanded' we have not as yet decided. The Lincoln's Inn MS. 137 (2) gives for this period only abstract notes arranged in a legal (not chronological) order. These notes, since they contain no proper names, clearly seem to have been the outcome of condensation. For another British Museum MS. see below, p. 194.

convenience of readers seemed to plead in favour of the maintenance of that ordering of the cases which is found in the Vulgate unless that ordering were demonstrably wrong. Then we have looked about for better readings. A note at the beginning of every case will tell what manuscripts we have consulted. When we have found materially different versions of one case, we have often printed both instead of endeavouring to combine them, though we are by no means sure that the two are absolutely independent. This procedure may at times seem tedious, and it postpones to a distant date the completion of a new edition of the Year Books of Edward II. But there are serious questions open concerning the manner in which these reports were made, and those questions will not be satisfactorily answered unless students can see in print a good many specimens of divergence.

When we had taken from *A*, *B*, and *D* all the matter that is attributed to the first two years, we went to other MSS. for other cases and have found some which seem to us of more than ordinary interest. These, however, though they are already in type, have been crowded out of the present volume.

On the other hand, we must confess to having printed among the cases of the second year a small group which we believe to belong to an older time, partly because they are peculiar to one family of manuscripts (*A*, *B*, *D*), partly because we have been singularly unsuccessful in finding the corresponding records, and partly because the names of the judges and counsel seem to point to an earlier date. The plainest instance is an assize taken by 'Cressingham' (p. 130), for the only man of that name whom we expect to see in such a context is the Hugh of Cressingham who, after a judicial career in England, became Edward I.'s treasurer of Scotland, and who was slain and (so the story goes) flayed by the Scots in 1297. A few cases on each side of this case seem to us suspicious. We print them, however, in the place that they occupy in the old edition, for we would not that they should be forgotten. Unless the record has been found, it is often hard exactly to fix the date of a case, since our manuscripts in no way distinguish the names of judges from the names of counsel, and these names, like other names, were sometimes miscopied.[1]

It is hoped that the needs of various classes of readers will be sufficiently met by (1) a concordance of this edition with the edition of 1678; (2) a concordance of this edition with Fitzherbert's Abridgement; (3) a table of the statutes that are referred to; (4) a table of the forms of action; (5) a table of cases, constructed out of our head-

[1] Our doubt extends from Case 75 (p. 115) to Case 72 (p. 142).

notes; (6) an index of matters; (7) an index of place names and family names.[1]

This Introduction has been long. In subsequent volumes we hope to give more cases and less disquisition; but the success of the Society's enterprise must depend very largely on the interest that readers and potential editors can be persuaded to take in the law and life and logic—and therefore incidentally in the language—of the fourteenth century; and if we in these pages have done anything to arouse or strengthen that interest, the length of our discourse may perhaps be forgiven.

[1] It seemed needless to give Christian names in this brief index. Any one who wanted to find a John Devereux, or an Eva Devereux, would look for 'Devereux' and would find but one reference. Also, when we get correct names from the record, it seems needless to index the distorted names given by the reports: *e.g.* 'Emorp' for 'Everois' or 'Devereux.' When we place a name of a county after a family name (*e.g.* Maundeville, Dors.), we mean that this name occurs in connection with that county: *e.g.* that a Maundeville appears as holding land in Dorset.

LEGAL CALENDAR

OF THE

FIRST AND SECOND YEARS OF EDWARD II

The first year of the reign began on 8 July, 1307, the second year on 8 July, 1308.

In 1307 the Sunday letter was A and Easter fell on 26 March.

In 1308 the Sunday letters were G F and Easter fell on 14 April.

In 1309 the Sunday letter was E and Easter fell on 30 March.

Justices of the King's Bench.

First and Second Years:—Roger le Brabazon, C.J.; Gilbert de Roubury; Henry Spigurnel.

Justices of the Common Bench.[1]

First year, Michaelmas, Hilary, and Easter Terms:—Ralph de Hengham, C.J.; William de Bereford; William Howard; Peter Malore; Lambert de Trikingham; Hervey de Stanton.

First year, Trinity Term:—Ralph de Hengham, C.J.; William de Bereford; William Howard; Lambert de Trikingham; Hervey de Stanton.

Second Year, Michaelmas Term:—Ralph de Hengham, C.J.; William de Bereford; Lambert de Trikingham; Hervey de Stanton.

Second Year, Hilary Term:—The same and Henry le Scrope.[2]

Second Year, Easter and Trinity Terms:—William de Bereford, C.J.;[3] Lambert de Trikingham; Hervey de Stanton; Henry le Scrope.

[1] The names are taken from the feet of fines.

[2] Appointed 27 November, 1308.

[3] Appointed Chief Justice 15 March, 1309. As we have not been able to date more exactly all the cases attributed to the second year, we have not in this volume placed 'C.J.' after Bereford's name, and in a few instances it may be doubtful whether Scrope speaks as judge or as counsel.

Names of Counsel mentioned on the Rolls of the Common Bench.[1]

Asshele, Robert de
Clauer [Claver] or le Clauer, John
Est, Simon
Friskeney, Walter de
Goldington, William de
Hampton, Richard de
Hedon, Robert de
Herle, William de
Hertipol, Geoffrey de
Huntingdon, Ralph de
Kingeshemede, Adam de
Kingeshemede, Simon de
Laufare, Nicholas de
Malberthorpe, Robert de
Mareys, William de
Mutford, John de
Passelewe [more rarely de Passeley], Edmund
Ruston, William de
Scoter, Roger
Stapilton, Richard de
Toutheby, Gilbert de
Westcote, John de
Wileby, Richard de

No roll of the Common Bench for the first term (Michaelmas) of the new reign has been found. On 13 October, 1307, the king held a Parliament at Northampton, to which the judges were summoned. It appears from the feet of fines and other evidence that on 3 November (*cras Animarum*) the Common Bench began a short session at Westminster. For all the other terms of the first two years rolls are extant, and in a few instances the 'Rex' roll as well as the Chief Justice's roll is preserved.

[1] When a fine is levied the 'narrator' who is to receive the chirograph is named on the roll. Mr. Turner has supplied us with the subjoined list of names. In a few instances it suggests corrections of the manner in which we have dealt with the abbreviated names that occur in the Year Books.

THE YEAR BOOKS OF EDWARD II.

PLACITA DE TERMINO S. MICHAELIS ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI PRIMO.

1. MAULAY *v.* DRIBY.[1]

Recordum de forma doni en le reverti ou la tenaunte alegga en abatement del bref un jugement qe se fist ou bref de dreit super excepcionem de nontenure. Forma donacionis en le reverti ou le tenaunt dit q'il tynt les tenemenz ov un altre et pria eyde etc.[2]

Petrus filius Petri de Malo Lacu,[3] Rogerus Kerdestone et Juliana de Gaunt [4] per attornatum suum petunt versus Johannam que fuit uxor Roberti de Dribi [5] terciam partem duarum parcium manerii de H. cum pertinenciis, exceptis x. mesuagiis, xv. toftis, vj. carucatis terre, xl. acris prati, c. acris pasture et xxv. libratis redditus, cum pertinenciis in eodem manerio, quam Gilbertus de Gaunt [6] senior, pater predicte Juliane et avus predictorum Petri et Rogeri, cuius heredes ipsi sunt, dedit Gilberto de Gaunt iuniori et Lore uxori eius et heredibus de corporibus ipsorum Gilberti et [7] Lore procreatis, et que post mortem ipsorum Gilberti et Lore [8] ad prefatos Petrum, Rogerum et Julianam reverti debent per formam donacionis predicte, eo quod Gilbertus de Gaunt iunior et Lora uxor eius etc. obierunt sine heredibus de corporibus suis etc. Et unde dicunt [9] quod predictus Gilbertus senior fuit seisitus de predictis tenementis in dominico suo ut de feodo et de iure tempore pacis, tempore Regis Henrici avi Regis nunc,[10] capiendo inde explecia ad valenciam etc., qui tenementa illa dedit predicto Gilberto de Gaunt et Lore uxori eius et heredibus de corporibus ipsorum etc. in forma predicta, per quod iidem Gilbertus et Lora fuerunt seisiti per formam donacionis predicte [11]

[1] *Vulg.* p. 1. Text from *A*: compared with *B*, *D*, *L*, *P*. [2] Second part of headnote from *P*. [3] Maule *P*. [4] Graunt *B*; Tauntone *P*. [5] Doyly *L*; Doile *P*. [6] Gaytone *P*. [7] de *Vulg*. [8] *Om.* et que. . . . Lore *B*, *Vulg*. [9] dicit *B*, *Vulg*. [10] avi nostri nunc *Vulg*. [11] *Ins.* ut dicit *B*, *Vulg.*; *ins.* ut supra *L*.

PLEAS OF MICHAELMAS TERM, 1 EDWARD II. (A.D. 1307.)

1. MAULAY *v.* DRIBY.

Land had been given to husband and wife in tail by the husband's father. It was afterwards, during the wife's life, recovered against the husband in a writ of right after a verdict given against him on a plea of non-tenure. *Qu.* whether, after the death of the husband and wife without issue, this recovery is a bar to a writ of formedon in the reverter brought by the heir of the donor against the heirs of the recoveror.

Peter son of Peter de Maulay, Roger of Kerdeston and Juliana of Gaunt, by their attorney, demand against Joan, wife that was of Robert of Driby, the third part of two parts of the manor of H. with the appurtenances (except ten messuages, fifteen tofts, six carucates of land, forty acres of meadow, a hundred acres of pasture and twenty-five pounds' worth of rent in the same manor), which [third part] Gilbert of Gaunt the elder, father of the said Juliana and grandfather of the said Peter and Roger, whose heirs they are, gave to Gilbert of Gaunt the younger and Lora his wife and the heirs of their bodies begotten, and which after the death of them, Gilbert and Lora, ought to revert to the said Peter, Roger and Juliana by the form of the said gift, for that Gilbert of Gaunt the younger and Lora his wife died without heirs of their bodies etc. And as to this matter [the demandants] say that Gilbert the elder was seised of the tenements in his demesne as of fee and of right in time of peace, in the time of King Henry the now King's grandfather, by taking thence esplees to the value etc.; and that [Gilbert the elder] gave those tenements to the said Gilbert [the younger] and Lora his wife and the heirs of their bodies etc. in the form aforesaid; and that by virtue thereof Gilbert and Lora were seised by the form of the gift;

etc., et quia[1] iidem Gilbertus iunior et Lora obierunt sine herede de corporibus etc., revertebatur ius etc. predicto Gilberto seniori, ut donatori etc., et de ipso Gilberto cuidam Gilberto filio et heredi, et de ipso Gilberto, quia obiit sine herede de se, descendit ius etc. quibusdam Helewysie, Nicholae, Margarete et Juliane,[2] que nunc petit[3] simul etc., sicut sororibus et heredibus etc., et de ipsa Helewysia, quia obiit sine herede de se, descendit ius propartis sue prefatis Nicholae et Margarete et isti Juliane, que nunc petit etc., ut sororibus etc., et de ipsa Nicholaa descendit ius propartis sue[4] isti Petro, qui nunc petit simul etc., ut filio et heredi etc., et de ipsa Margareta descendebatur ius propartis sue isti Rogero, qui nunc petit simul etc., ut filio et heredi,[5] et que post mortem etc. Et inde producunt sectam.

Et Johanna per attornatum suum venit, et alias dixit quod ipsa tenet ipsam terram cum pertinenciis in proparte sua simul cum Thoma filio Ade de Kaley[6] et Philippo filio Johannis de Horeby[7] de hereditate Roberti filii Roberti de Tadeshale etc., sine quibus etc., et petit auxilium etc. Ita quod predicti Thomas et Philippus habuerunt diem per essoniatorem suum a die S. Martini in xv. dies postquam summoniti[8] etc. Et tunc non venerunt.[9] Per quod concessum fuit quod eadem Johanna respondeat sine[10] etc.

Et predicta Johanna defendit ius etc. et dicit quod non debet eis ad istud breve respondere. Dicit enim quod post mortem predicti Gilberti de Gaunt senioris de cuius seisina etc.,[11] predictus Gilbertus de Gaunt iunior, filius et heres Gilberti senioris, fuit seisitus de predicto manerio cum pertinenciis, versus quem Robertus de Tadeshal frater predicte Johanne, cuius una heredum ipsa est, coram Hugone de Cressingham et sociis suis iusticiariis ultimo itinerantibus in comitatu predicto, tulit breve de recto de predicto manerio cum pertinenciis, narrando de seisina cuiusdam Philippi antecessoris sui tempore Regis Ricardi, consanguinei[12] domini Regis nunc, de eodem manerio seisiti, offerendo[13] sectam et disracionacionem in mero iure etc., ubi predictus Gilbertus iunior placitavit cum eodem Roberto et posuit se in iuratam patrie ibidem inter eos captam,[14] ita quod idem Robertus per consideracionem curie eiusdem factam[15] super veredicto iurate[16] predicte recuperavit seisinam suam versus eundem Gilbertum. Et ex quo

[1] et si *B*, *Vulg*. [2] Only initials given *A*, *B*, *D*, *Vulg*. Names from *L*, *P*. [3] petunt *A*, *D*, *Vulg*; petit *B*. [4] *Om*. prefatis . . . sue *A*. [5] *Om*. clause touching descent of Margaret's share *B*, *D*, *Vulg*. A mere hint of it in *A*. Our text from *L*. [6] Kailby *B*, *D*, *Vulg*.; Cayby *L*. [7] Oreby *B*, *D*, *Vulg*.; Ornesby *L*. [8] sum' *MSS*. [9] veniunt *A*; venit *B*, *L*; vener' *D*. [10] responder' sum' *L*. [11] Repeat last seven words *A*. [12] cofr' *A*. [13] conferendo *A*. [14] capte *B*, *D*, *P*, *Vulg*. [15] facte *A*, *B*, *Vulg*. [16] iurato *A*.

and that, because they died without an heir of their bodies etc., the right reverted etc. to Gilbert the elder as to the donor etc.; and that from him [it descended] to one Gilbert his son and heir; and that from him, since he died without an heir of his body, the right descended to Helewise, Nichole, and Margaret and the said Juliana, the now demandant, as to [his] sisters and heirs; and from the said Helewise, since she died without an heir of her body, the right of her share descended to Nichole and Margaret and the said Juliana, the now demandant, as sisters etc.; and from the said Nichole the right of her share descended to the said Peter, one of the now demandants, as son and heir; and from the said Margaret the right of her share descended to the said Roger, one of the now demandants, as son and heir; which [third share] after the death [of Gilbert and Lora ought to revert] etc.; and thereof they produce suit.

And Joan by her attorney came and on a previous occasion said that she holds the land with the appurtenances in her purparty along with Thomas son of Adam of Caley and Philip son of John of Orby of the inheritance of Robert son of Robert of Tattershall, and that without them [she cannot answer], and of them she prayed aid. So the said Thomas and Philip by their essoiner had a day given them on the quindene of St. Martin last past after they had been summoned. And then they came not. And therefore it was awarded that the said Joan should answer without them.

And the said Joan defends their right etc.,[1] and says that she ought not to answer to this writ. For she says that after the death of Gilbert of Gaunt the elder, upon whose seisin [the demandants claim,] Gilbert the younger, son and heir of Gilbert the elder, was seised of the said manor with the appurtenances; and against him Robert of Tattershall, Joan's brother, one of whose heirs she is, brought a writ of right for the said manor with the appurtenances before Hugh of Cressingham and his fellows, the justices last making eyre in that county, and counted on the seisin of one Philip his ancestor in the time of King Richard, cousin of the now King, and offered suit and deraignment on the mere right etc.; and that Gilbert the younger there pleaded with the said Robert and put himself on a jury of the country, which was there taken between them; and that upon the verdict of the said jury Robert recovered his seisin against

[1] That is, she denies ('defendit') the right of the demandants.

predictus Robertus manerium illud recuperavit per iudicium curie etc. super predicto brevi de recto in forma predicta, quod breve supremum est et alcioris [1] nature quam istud [2] breve de forma donacionis vel aliud breve,[3] petit iudicium si predicti Petrus et alii [4] isto brevi de seisina Gilberti senioris, per medium Gilberti iunioris,[5] qui fuit pars predicti brevis de recto et ad illud [6] idem breve predictum manerium amisit, ut predictum est, uti possint an debeant in hac parte.

Et Petrus [7] et alii bene concedunt quod iudicium fuit [8] redditum coram prefatis iusticiariis itinerantibus pro predicto Roberto de Tadeshal de predicto manerio super veredicto iurate patrie, que ibidem inter eos capta fuit super excepcione nontenure [9] inde per ipsum Gilbertum allegata in predicto brevi de recto. Set dicunt quod per hoc excludi non debent de isto brevi de [10] forma donacionis que eis competit de iure revercionis secundum formam donacionis predicte. Dicunt enim quod iudicium illud super veredicto iurate predicte non est ita ligans [11] quam fuerit in predicto brevi de recto sicuti iudicium factum post duellum vel magnam assisam ubi merum [12] ius terminatur. Dicunt insuper quod predictus Gilbertus iunior tempore predicti placiti predictum manerium cum predicta Lora uxore sua tenuit[13] per formam donacionis quam Gilbertus de Gaunt senior diu ante impetracionem brevis predicti de recto eisdem Gilberto et Lore fecerat sicut predictum est, racione cuius [14] forme sic facte eadem Lora que fuit uxor eiusdem Gilberti iunioris et que supervixit [15] ipsum Gilbertum virum suum posset petivisse [16] predictum manerium [17] si volebat post mortem predicti Gilberti, predicto iudicio non obstante. Et ex quo eisdem Petro et aliis heredibus nunc petentibus ius revercionis per istud [18] breve secundum formam donacionis predicte non competebat nisi [19] post mortem eiusdem Lore, que fuit pars doni predicti, ut predicitur, petunt [20] iudicium si ad istud [21] breve [22] non de novo [23] provisum set pro heredibus donatoris [24] in huiusmodi [25] casu communiter provisum et usitatum ab antiquo, et non ad aliud, responderi non

[1] alterius *B, D, Vulg.* [2] illud *A*; istud *B, D, L, P.* [3] *Ins.* et *A, Vulg., B, D.* [4] *Ins.* in *A.* [5] iuniorem *A.* [6] aliud *B, Vulg.* [7] petens *A, B, D, Vulg.*; Petrus *L, P.* [8] *Om.* fuit *Vulg., B, D, L*; *ins. A, P.* [9] non tenetur *Vulg., B, D*; non tenure *A, L, P, Roll.* [10] debent etc. per *A.* [11] legans *A*; ligans *B, D, L, P.* [12] utraque *Vulg., B*; merum *L, P*; utrumque, *but over erasure, D.* [13] *Om.* tenuit *Vulg., B*; *interlined in D.* [14] cuiusdam *A, B, D*; cuius *L.* [15] supervexit *A.* [16] pertinuisse *Vulg., B*; petiuisse *L, P*; petiuisse *Roll*; recuperasse *D.* [17] *Om.* manerium *A, B, L.* [18] illud *A*; istud *L, P.* [19] vero *Vulg., B.* [20] petit *Vulg., B, D, L.* [21] illud *A*; aliud *B, Vulg.*; aliud *corrected into* illud *D*; istud *L.* [22] *Ins.* in iure revercionis *L.* [23] dono *Vulg., B, D.* [24] *This from P*; set per donacionem, *Al. Cod.* [25] omni *P*; huiusmodi *Al. Cod. and Roll.*

Gilbert by judgment of the court. And because Robert recovered that manor by judgment of the court upon the said writ of right in form aforesaid (which writ of right is supreme and of a higher nature than the present writ of formedon or any other writ), [Joan] demands judgment whether in this writ the said Peter and the others can or ought to make use in this wise of the seisin of Gilbert the elder by the intermediation of Gilbert the younger, who was party to the said writ of right and by that writ lost the said manor as aforesaid.

And Peter and the other [demandants] fully admit that before the said justices in eyre a judgment was rendered for the said Robert of Tattershall for the said manor upon the verdict of a jury of the country which was there taken between them upon a plea of non-tenure alleged by the said Gilbert in the said writ of right. But they say that by this they ought not to be excluded from this writ of formedon which belongs to them by reason of the reversion according to the form of the aforesaid gift. For they say that the said judgment upon the verdict of the said jury is not so binding as would have been a judgment made in the said writ of right after battle or the grand assize where the mere [or greater] right is determined.[1] They also say that the said Gilbert the younger at the time of the said plea held the said manor along with the said Lora by the form of the gift which Gilbert the elder had, as aforesaid, made to them long before the purchase of the said writ of right; by reason of which said form the said Lora, who was the wife of the said Gilbert the younger and who survived him, might after his death have demanded the said manor, notwithstanding the same judgment. And forasmuch as the right of reversion under this writ became available to the said Peter and the other heirs now demanding, only upon the death of the said Lora, who was a party to the said gift, they [the demandants] crave judgment whether they [the demandants] ought not to be answered to that writ and to none other[2]—it not being a writ newly devised, but one from of old commonly provided for and used by the heirs of the donor in such cases[3]—more especially

[1] The Lat. *merum* here represents Fr. *maire* (greater).

[2] This replication is being given in answer to a plea in abatement of the writ.

[3] Or 'in all cases.' Apparently the demandants make the point that the writ of formedon in the reverter is not, like the formedon in the descender, a new statutory writ, but is an old well-known remedy.

debeat, maxime cum per[1] predictum iudicium super veredicto iurate de exceptione predicta redditum[2] ius merum non fuit aliqualiter terminatum.

Et sic habuerunt[3] diem ad audiendum iudicium.

Note.

Inquests taken on the death of Gilbert of Gaunt (the elder) in 2 Edw. I. (1273–4) found that Gilbert of Gaunt (the younger) was his son and heir, and was of the age of twenty-four or twenty-five years: also that Gilbert the elder gave the vill of Hundemanby (Ebor.) to Gilbert his son 'in maritagio cum Lora de Balyolo' (Calend. Geneal. p. 212). Inquests taken on the death of Gilbert the younger in 26 Edw. I. (1298) found that his heirs were Roger of Gertheston [Kerdiston], aged twenty-four years and upwards; Peter son of Peter de Maulay, aged eighteen years and upwards; and Juliana, Gilbert's sister, aged forty years and upwards; also that Lora, Gilbert's widow, was not yet endowed (*ibid.* p. 556). Apparently Lora, though dead before 22 Aug. 1309, was (or was believed to be) yet alive on 23 May, 1308 (Calendar of Close Rolls, pp. 37, 170). This may throw some doubt on the exact date of the action here reported.

Inquests taken on the death of Robert of Tattershall in 34 Edw. I. (1305–6) found that Thomas son of Adam de Caylly, Johanna de Dryby, and Isabella wife of John of Orreby, were his heirs: Johanna and Isabella were great aunts of the decedent, and Thomas was the son of Emma, another great aunt (Calend. Geneal. p. 717). In 1308 these parceners were making partition (Calendar of Close Rolls, 58 ff.).

2. HAYWARD *v.* KILBURN (PRIORESS OF).[4]

Recorde de novele diseisine de une chambre et un corodie sauntz especialté.

Assisa venit recognitura si Priorissa de Kelburne[5] iniuste etc. disseisivit Martinum le[6] Haywarde[7] et E.[8] uxorem eius de libero tenemento suo in K. post primam etc. Et unde queritur[9] quod disseisivit eos de una camera et de quodam corodio percipiendo in prioratu eiusdem Priorisse, scil. de vj.[10] panibus in septimana, precii cuiuslibet unius oboli, et quatuor lagenis servisie et dimidia, precii

[1] *Om.* per *B, D, Roll.* [2] iurate except' (*or* exemplis) predicto redditu (*or the like*) *MSS.* [3] habuit *B, Vulg.*; habent *L.* [4] *Vulg.* p. 2. Text from *A*: compared with another copy (*A* 2) in the same MS., and with *B, D, L.* [5] Kelkeborne, Killebur', Kilborn', etc. *MSS.* [6] de *A.* [7] Howarde *A* 2. [8] Elenam *A* 2, *L.* [9] *Or perhaps* queruntur *in some MSS.* [10] v *A* 2; vij *B, D*; sex *L.*

as by the said judgment made upon a verdict of a jury upon the aforesaid plea [of nontenure] the mere right was not in any wise determined.

And so they had a day to hear judgment.

Note.

The record of this case has not been found. Apparently no roll of the Court of Common Pleas for the Michaelmas term of 1 Edw. II. is extant. But on the De Banco Roll (No. 212) for Mich. 9 Edw. II. (r. 428 d. Ebor.) there is a record of an action brought by the same demandants against John de Orreby for a third of two thirds of the manor of Hundmanby. John as tenant by the curtesy is granted aid of his son Philip, who however does not appear when summoned. Subject to this difference, the pleadings are in all matters of substance those set out above, and from this roll of 9 Edw. II. we have taken a few readings which are designated by 'Roll.' The action against Orreby was thrice adjourned for judgment, the last adjournment being to the quindene of Martinmas 10 Edw. II.; but no judgment has been found.

In Maynard's Table (under *Droit*) this case is thus summarised:— 'Father gives to son and his wife and the heirs of their bodies; father dies; writ of right is brought against husband and there is a recovery upon verdict; the son dies without issue; the wife enters and dies; the recoveror enters; the heir of the donor brings formedon in the reverter; the recovery is pleaded in bar: Mich. 1 E. 2 fo. 1, 2.'

2. HAYWARD *v.* KILBURN (PRIORESS OF).[1]

An assize for a corody and a chamber in a priory will not lie for one who is seised of it unless he shows a deed, for it is a profit *in alieno solo*.[2]

The assize comes to find whether the Prioress of Kilburn unjustly disseised Martin Hayward and Ellen his wife of their free tenement in K. after the [term of limitation]. And as to this matter they complain that she disseised them of a chamber and of a corody to be taken in the priory of the said Prioress, to wit of seven loaves a week, the price of each being one halfpenny, and of four gallons and a half

[1] Record not found. At Kilburn, in Middlesex, was a Benedictine nunnery.

[2] Headnote translated from Maynard's Table under *Corody*.

iiij. denariorum, et ij. ferculis[1] carnis,[2] precii unius denarii, et diebus piscium una fercula piscium, precii oboli.

Et Priorissa[3] venit et dicit quod assisa inter eos fieri non debet. Dicit enim quod predicta camera de qua predicti Martinus et E. queruntur se disseisiri est de prioratu suo et fuit a tempore fundacionis eiusdem prioratus, et[4] ex quo iidem[5] Martinus et E. clamant tenementum liberum in predicta camera simul cum corodio in predicto prioratu percipiendo, et sic alieno solo, nec aliquid facti specialis[6] de ipsa Priorissa aut predecessorum suarum seu alicuius alterius tituli per quod liquere[7] posset curie quod actio liberi tenementi eis in predicta camera et corodio accrevit in hac parte ostendunt,[8] petit iudicium.

Et Martinus et E. dicunt quod die quo desponsavit etc. idem Martinus invenit ipsam E. seisitam de predictis camera et corodio etc.

Et Martinus et E., requisiti si factum speciale habent, nichil[9] proferunt nec alium titulum ostendunt. Ideo concessum[10] est quod Priorissa eat sine die etc.

3. ANON.[11]

Nota ou cely qe fut atorné en le principal plee voleit avoir respoundu com attorné en le *scire facias.*

Nota qe ou le demaundaunt recovera seisine de terre, et einz ceo q'il suyst bref de[12] execucioun le Roy morust, par quai le demaundaunt après l'an suy le *scire facias* vers le tenaunt, et[13] celuy qe fut attorné en le original voleyt aver respondu pur[14] attorné pur le tenaunt en le *scire facias* pur ce qu'il fut dependaunt del original, et ne put mye estre receu, pur ceo qu'il ne fut pas[15] attourné fors en le bref original, le quel bref avoit perdue sa force qaunt le jugement fut rendue.

[1] fercula *A.* [2] *Ins.* singulis diebus carnium *L.* [3] Prior *B*, *Vulg.* [4] *Om.* et *A.* [5] eidem *A.* [6] factum speciale *A* 2. [7] per quod liquere *A*, *L*; per quod loquitur obstare *Vulg.*; per quod loquitur obscure *B*; per quod loquitur obscure, *corrected into* per quod loquere (*for* liquere) *D.* [8] eundem (?) *A.* [9] vel *B*, *Vulg.* [10] consideratum (?). [11] *Vulg.* p. 2. Text from *A*: compared with *B*, *D*, *L.* [12] davoir *B*, *Vulg.* [13] ou *B*, *L*, *Vulg.* [14] par *A*; pur *B*, *D*, *Vulg.* [15] *Om.* pas *B*, *Vulg.* *Om. both* ne *and* pas *D.*

of beer, price fourpence, and of two dishes of flesh on every flesh-day, the price of each one penny, and on fish-days of one dish of fish, the price being one halfpenny.

And the Prioress comes and says that an assize between them there ought not to be. For she says that the said chamber, whereof the said Martin and Ellen complain that they are disseised, is in her priory and so was at the foundation of the said priory, and inasmuch as the said Martin and Ellen claim a freehold in the said chamber together with the said corody to be taken in the said priory, and [thus claim a right] *in alieno solo*; and inasmuch as they show no specialty from the Prioress or her predecessors nor anything else by way of title whereby it may appear to the court that an action for freehold has accrued to them in this behalf in the said chamber and corody, she [the Prioress] demands judgment.

And Martin and Ellen say that on the day when [Martin] married [the said Ellen] he found her seised of the said chamber and corody etc.

And Martin and Ellen, being asked whether they have any specialty, produce nothing and show no title. Therefore it is awarded that the Prioress go hence without day etc.

3. ANON.

An attorney appointed for the defence of an action is not thereby empowered to defend proceedings consequential on the judgment, *e.g.* in a *scire facias*.

The demandant recovered seisin of land, and before he sued a writ of execution the King died, and so after the year the demandant sued a *scire facias* against the tenant. A person who was [the tenant's] attorney in the original [writ] desired to answer as attorney for the tenant in the *scire facias*, this being dependent on the original [writ]. But the Court would not receive him, for he had only been attorned in the original writ, and that writ lost its force when the judgment was rendered.

PLACITA DE TERMINO S. HILLARII ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI PRIMO.

1. KYME *v.* LEAKE.[1]

Drein present, ou piert qe homme pledra mye del assise après q'il eyt pledé al assise.

Darain present, ou la fyne fuist mys en barre et dist fuist q'ele ne barreit mie l'assise. Et sic ad iudicium.[2]

Symon de Kyme[3] et Maude[4] sa femme porterent le dreyn present vers Nichol de Leek[5] et prierent que reconu[6] fut par assise qe avowé presenta[7] la dreyn persone a la eglise de Leek. Et disseint que a eaux[8] appent a presenter, par la resoun qe Symon et M. presenterent un lour clerk R. par noun qe etc., et qe au temps qaunt il presenterent si furent il seisi de la moyté del manoir du Leek, a qei la avoweson est apendaunt et sount huy ceo iour. Et prierent l'assise.

Herle. Vostre moustraunce[9] est en noun cer teyn, et prioms qe vous la metez en certeyn, qar il[10] poet[11] avoir presenté com gardeyn ou com de dreit sa femme ou com joynt purchaçour.

Pass. Pernetz[12] la[13] auxi com nous le dyoms.

Herle.[14] Assise ne deit estre, qar as uttaves de Saint Hillair l'an du regne le Roi Edward xxx^me^ se leva une fine devaunt Sire Rauf de Hengham[15] et ses[16] conpaignouns entre les avauntditz S. et M. d'une part et N. de Leek d'aultre part, ou mesme ceaux S. et M. counuserunt[17] lez tenemenz nometz en la fine ensemblement ovesqe l'avoweson de la eglise de Leek estre le dreit N. com ceo qe[18] avoit de lour doun, a

[1] *Vulg.* p. 3. Text from *A*: compared with *B*, *D*, *L*. A second and briefer version (*A* 2) is found in *A*. [2] The second note is from *B*. [3] Hoine *B*, *Vulg.*; Holm' *L*. [4] Maude *L*; Marg' *A etc.* [5] Lee *L*. [6] conu *D*, *Vulg.* [7] presentr' *A*. [8] a ceaux *A*. [9] demoustraunce *B*, *L*, *D*, *Vulg.* [10] *Ins.* ne *A*; *om. B*, *D*. [11] poet *B*, *D*, *Vulg.*; pount *A*. [12] pernettz les paroules *Vulg.*; *sim. B*. [13] *Om.* la *L*; le *D*. [14] Ascribed to Malm. *A* 2. [15] Sire H. de Hingh *Vulg.* [16] ces *A*. [17] conuseient *L*. [18] qil *B*, *D*.

PLEAS OF HILARY TERM, 1 EDWARD II. (A.D. 1308.)

1. KYME *v.* LEAKE.[1]

Qu. Whether in an assize of last presentation a fine levied on a writ of *warantia cartae* can be pleaded in bar to the assize. Is the advowson vested in the conusee of such a fine before he presents? Such a fine is not executory but executed.

Simon of Kyme and Maud his wife brought [an assize of] last presentation against Nicholas of Leake, and prayed that the assize might find what patron presented the last parson to the church of Leake, and said that the presentation belonged to them because Simon and Maud presented a certain clerk of theirs, R. by name, who [was instituted etc.], and that at the time when they presented they were seised of a moiety of the manor of Leake, to which the advowson is appendant, and that they are at this day seised thereof. And they prayed the assize.[2]

Herle. Your declaration is uncertain, and we pray that you make it certain, for they may have presented as guardians, or in right of the wife, or as joint purchasers.

Passeley. You must take our words just as we say them.

Herle. There ought not to be an assize, for on the octave of St. Hilary in 30 Edward I. a fine was levied before Sir Ralph Hengham and his fellows between the said Simon and Maud of the one part and Nicholas of Leake of the other part, whereby Simon and Maud confessed that the tenements named in the fine, together with the advowson of the church of Leake, were the right of Nicholas as

[1] Proper names corrected by the record.

[2] Apparently Passeley and Warwick are for the plaintiffs; Herle, Westcote, and Malberthorpe for the deforciants.

avoir et tenir etc., et S. et M. et[1] les heirs M. garr[auntireient] a N. etc., et demaundoms iuggement si encountre la fyne, a quel heus mesmes furent parties, assise deyve estre, et prioms bref al evesqe.

Pass. Ceo est un bref de possessioun, et avoms dit qe nous presentames et qe nous sumes seisi de la[2] moyté du manoir etc., le quel nous voloms averrer, et prioms l'assise.

Herle. Quey r[espon]ez a la fyne?

Pass. Assez nous suffit de meyntenir nostre possessioun. Aultre est[3] en ceo cas qe ne serreit en un *quare impedit.*

Brabasoun.[4] Il semble qe mestier serreit a respoundre a ceo q'il ount dit, qar il ount[5] dit ij choces sur queux il covent qe la court seit ascerté, et la ou il dient adeprimes qu'il[6] presenterent la drein persone etc., et l'autre[7] qe furent[8] seisi de la moyté du manoir a qe etc., pur quay[9] deyt homme conustre ou[10] dedire etc., et puis pleder sur la fine.

Westone.[11] A ceo n'ai jeo mestier, qar nous avoms usé la fine com barre, de la quel il y avoit oiye[12] et sur ceo il isserent d'enparler, et ore ne unt il rin[13] respoundu, mès bient[14] nous chacer a respoundre a lour tittle, et par qaunt[15] nous plederoms al assise la ou nous avoms usé la fine en barre, et[16] issint plederoms al assise et del assise, q'est[17] encountre ley.[18]

Herle. J'ai veu bien[19] un quiteclayme barrer la assise del dreyn present, par plus fort r[esoun] la fine.[20]

Warr. Ceo put estre par parouls.[21]

Herle. R[esponez] a la fine, et pus pernetz lez paroules de la fine.[22]

Hengham. Le quel presenta il[23] avaunt la fine ou puis la fyne?[24]

Herle.[25] A ceo n'avoms mestier a respoundre a lour demostraunce, qar au temps qaunt la fine se leva si furrent il[26] oustez par lour conissaunce de tut manere de dreit qu'il clamerent en l'avoueson. Jugement si a tieul choce dount il sount[27] oustee par la fine, a quay

[1] *Om.* et *A.* [2] sa *A.* [3] *Om.* est *A*; *ins. B, D, L, Vulg.* [4] *In A* 2 *this speech reads thus*: Ordre sereit a pleder primus a ceo q'il dit q'il fut seisi de tenemenz etc. et presenta la drein persone, et puis pleder a la fyn etc. [5] ad *B, D.* [6] *Om.* last three words, *B, L, Vulg.* Interlined in *D.* [7] *Om.* lautre *B, L, Vulg.* Interlined in *D.* [8] q'il fuist *B, L, Vulg.* [9] *Ins.* a ceux deux parties *Vulg., B*; pur quei deux parties *D, L.* [10] ceo est a *L.* [11] West. *B, D, L, Vulg.* [12] oye *B*; oy *L.* [13] rien *B, L*; riens *D.* [14] vicint *Vulg.* In *B* original reading was 'en biant,' but this has been made to look like 'vicint'; 'en biaunt' *L.* In *D* also the original reading was 'en biant,' but something like 'voient' has been superscribed. In *A* bieunt. [15] et par consequent *B, D, L.* [16] *Om.* et *A.* [17] qe serroit *B.* [18] nous plederoms al assise et del assise qe serreit encontre ley *L.* [19] Jeo ei veu *D.* [20] plus force respond' la fyne *Vulg.* [21] par autre parole *L.* *Add.* r' a la fyne *A.* [22] *Add.* pur vous *L.* [23] *Om.* il *A.* [24] *Om. last four words, A.* Le quel presenta dreyn avaunt la fyn ou puis la fyn *L.* [25] This is ascribed to Malm. *L.* [26] eux *B, D, L.* [27] se ount *B, D, L.*

being what he had by their gift, to have and to hold etc., and that Simon and Maud and the heirs of Maud would warrant to Nicholas etc. And we pray judgment whether an assize should be taken against the fine to which they themselves were parties; and we pray a writ to the bishop.

Passeley. This is a possessory writ, and we have said that we presented and that we are seised of a moiety of the manor etc., and this we are willing to aver, and we pray the assize.

Herle. What do you answer to the fine?

Passeley. It is enough for us to maintain our possession. This case is not the same as that of a *quare impedit.*

Brabazon, C.J.B.R.[1] It seems to me that you must answer to what they have said, for they have said two things about which the court should be certified. In the first place they say that they presented the last parson, and in the second place that they are seised of a moiety of the manor, and these two assertions must be confessed or denied, and afterwards you can plead about the fine.

Westcote. I am not bound to do that, for we have used the fine as a bar to their claim, and they have had oyer of the fine, and thereupon went out to imparl, and now they have made no answer to it, but endeavour to drive us to answer to their title; and as when we use the fine as bar to the assize we should be pleading that the assize should not be taken, so (if we took the course that you prescribe) we should both plead matter for the assize and that the assize should not be taken, and this would be contrary to law.[2]

Herle. I have often seen an assize of last presentation barred by a quitclaim, and *a fortiori* it can be barred by a fine.

Warwick. That may be because of words other [than what have here been used].

Herle. Make answer to the fine therefore and then discuss its words.

Hengham, C.J.C.B. Did Simon present before or after the fine?

Herle. As regards that matter we need not answer their declaration, for at the time when the fine was levied they were by their conusance ousted from all manner of right which they had in the advowson. We pray judgment whether we need answer about a right of this kind, from which they ousted themselves by a fine to

[1] He seems to be sitting in the Common Bench.

[2] The translation endeavours to expand a much compressed argument.

il sount parties, avoms [1] mestier a respoundre, ou encountre la fine deyve [2] l'assise estre.

Pass.[3] *ut prius*, et pria l'assise.

Malm. Desicome la fine barre naturelment l'assise, a quay il ne respount nyent, jugement, et [4] prioms bref al evesqe.

Berr.[5] Vostre respouns en cest derein present ne amount [6] nient plus qe ne fait vostre counte en un *quare impedit*,[7] qe [8] a nous [9] appent a presenter par la r[esoun] qe une fyne se leva entre nous [10] par quel fyn le dreit del [11] avowesoun fut conu a nous [12] et issint appent a nous [13] a presenter sauntz plus dire.[14] Et pur ceo nyent [15] plus vaudera [16] la fyne de cest part sauntz respoundre etc., desicome la fyn ne se vest [17] poynt sy noun par present[ement].

Herle. Nostre respouns en cest assise si chiet plus court qe counte [18] en un [19] *quare impedit.*

West. Il semble qe, tout vousist il respoundre a ceo qu'il dyent,[20] la court nel receivereit [21] pas, qar nous avoms usé la fine com barre al assise, et si nous deissoms qu'il [22] presenta pas ou [23] il ne furent pas seisiz [24] del moyté du manoir, de quey etc., ceo serroit naturelment en point de assise, et issint contrariaunt a nostre premer dit. Et demaundoms jugement.

Herle. De pier condicioun ne serrom nous en ceo cas qe nous ne serroms [25] si nous suissoms bref de execucioun hors de la fine si S. ou M. ou lour heirs nous deforc[erent] [26] de presenter.[27] Mès si nous suissoms bref devers eaux hors [28] de la note, il ne serreit mye respouns a dire qe eaux presenterent la dereynt [29] persone sauntz assigner dreit de presenter [30] pus la fine a eaux [31] estre [32] acreue. Et demaundoms jugement.

Berr.[33] Vous n'averez pas bref de execucioun saunz aleger dreit de presenter [34] en ceo cas, qar la fine se leva sur [35] bref de garrauntie de chartir e suppose [36] cely estre seisi a qi le dreit est conu.[37]

Et sic ad iudicium etc.

[1] eyoms *B* ; eoms *L* ; eioms *D*. [2] doyne *Vulg.* [3] *Ins.* ad alium diem *A* 2. *Om.* iugement et *B*, *D*, *L*, *Vulg.* [5] Warr. *B*, *Vulg.* [6] *Ins.* a *B*, *D*, *Vulg.* [7] *Ins.* mes ceo serreit bon r[espouns] en un *quare impedit L.* [8] qar *A*. [9] vous *B*, *D*, *Vulg.* [10] vous *A*, *D* ; nous *Vulg.*, *B*. [11] de *A*. [12] nous *Vulg.* ; vous *B*, *D*. [13] vous *B*, *D*, *Vulg.* [14] *Ins.* quasi diceret non *L*. [15] moult *Vulg.*, *B* ; nient *D*. [16] voidera *Vulg.*, *B*. [17] nest *Vulg.*, *probably* nest *B* ; *apparently* nest *corrected into* vest *D* ; vesty *L*. [18] *Om.* qe counte *A* ; *ins. B* ; qe un counte *L*. [19] plus court de un *D*. [20] *Ins.* qe *Vulg.*, *D*. [21] resteineroit *Vulg.* ; la court ne la soeffra *A* 2. [22] *Ins.* ne *B*, *D*. [23] *Ins.* qe *L*. [24] ag' *A* ; seisitz *Vulg.*, *B*. [25] serioms *L*. [26] deforcerent *L*. [27] del presentement *B*, *D*, *Vulg.* [28] *Om.* hors *A*. [29] dreine *B* ; dreyn *L*. [30] presentement *B*, *L*. [31] ceaux *A* ; ceux *D*. [32] *Om.* estre *B*, *Vulg.* [33] Herle *Vulg. B* ; Hertepol *L*. [34] *Om. last five words*, *B*, *D*, *Vulg.* [35] son *B*, *Vulg.* [36] supposa *B*, *Vulg.* [37] fuist conu per la fyne *Vulg. B*.

which they were parties, and whether an assize ought to be taken in opposition to the fine.

Passeley repeated what he had said, and prayed that the assize should be taken.

Malberthorpe. Since the fine, to which he makes no answer, is by its nature a bar to the assize, we pray judgment and a writ to the bishop.

Bereford, J. Your answer in this assize of last presentation amounts to no more than a count in a *quare impedit* which barely stated that the presentation belonged to you because a fine was levied between you and the other party, by virtue of which fine the right of the advowson was confessed to you and so it was for you to present. And [the allegation of] a fine is equally ineffectual in this case, unless you answer the plaintiff's assertion, for a fine does not vest [seisin] in you unless there be a presentation.

Herle. Our answer in this assize can take a shorter form than that of a count in a *quare impedit.*

Westcote. It seems to me that even if [the deforciant] desired to answer [the plaintiffs'] allegations, the court would not receive his answer, for we have used the fine as a bar to the assize, and if we were to say that they did not present or that they were not seised of the moiety of the manor to which [the advowson is appurtenant], this answer would naturally fall within the points of the assize, and so would be contrariant to our first assertion [namely, that the assize should not be taken]. So we pray judgment.

Herle. We cannot be in a worse position in this case than that in which we should be if we sued a writ of execution upon the fine because Simon and Maud, or their heirs, were deforcing us from our presentation. But if we sued a writ [of execution] against them which issued from the note [of the fine], it would be no answer for them to say that they presented the last parson, unless they alleged that the right to present accrued to them after the fine. So we pray judgment.

Bereford, J.[1] In such a case you will not obtain a writ of execution without alleging the right to present, for the fine was levied upon a writ of *warantia cartae*, and it supposes that the person to whom the right is confessed [the conusee] is seised.

So the case stands for judgment.

[1] This remark is also ascribed to Herle and to Hartlepool.

Note from the Record.

De Banco Roll, Hilary, 1 Edw. II. (No. 169), r. 1, 18, 124, Linc.

The De Banco Roll for Hilary term has several entries relating to this matter. On r. 1, under the heading 'Octave (20 Jan.) of St. Hilary,' stands an entry beginning 'Pes cuiusdam finis levati.' This states the contents of a fine levied at York on the Octave of St. John Baptist in 30 Edw. I. (1 July, 1302) before Ralph Hengham and other justices between Nicholas son of Robert 'de Leke in Holand,' plaintiff, and Simon of Kyme and Maud his wife, impedients, in an action of warranty of charter. Thereby Simon and Maud made conusance that certain messuages and lands 'in Leke et Levertone et villa S. Botulphi' (Leake, Leverton, and Boston in Lincolnshire) and the advowson of the church of Leake and the advowson of a moiety of the church of Leverton were the right of Nicholas as that which he had by the gift of Simon and Maud, to have and to hold to Nicholas and his heirs of the chief lords of the fee. Also Simon and Maud granted that they and Maud's heirs would warrant the premises; and for this conusance and warranty Nicholas gave them 40*l.* Then, this fine having been thus stated, the entry proceeds to say that now Nicholas comes and says that the church of Leake is vacant, and that by virtue of the fine the presentation ought to belong to him, but that Simon and Maud impede him from presenting. Therefore, says the entry, the sheriff is to do them to wit (*scire faciat*) that they are to be here on the Octave (9 Feb.) of the Purification to show cause why Nicholas should not have his presentation to the church of Leake according to the form of the fine.

Then (r. 124), under the heading 'Octave of the Purification,' we read that Simon and Maud are summoned to answer Nicholas in a plea that they do permit him to present to the church of Leake in Holland. Nicholas then counts that Simon and Maud in the time of Edw. I. presented Ralph de Metringham, the last parson, and that afterwards they gave the advowson to Nicholas, and that thereupon a fine was levied, and that they are unjustly impeding him to his damage, 100*l.* The entry then states that Simon and Maud appear and cannot deny (*non possunt dedicere*) that it belongs to Nicholas to present. 'And therefore it is considered that Nicholas recover against them his presentation to the said church and have a writ to the bishop of Lincoln bidding him admit Nicholas's presentee. And Simon and Maud in mercy, and Nicholas remits to them the damages etc.' The form of this entry is that of an action begun by writ of *quare impedit*. We may perhaps infer that Nicholas found that he could not enforce the fine by a judicial writ (*scire facias*) and that he must bring an action. (*Note continued on the opposite page.*)

Note from the Record (*continued*).

Meanwhile Simon and Maud had been bringing a cross action; namely, an assize of darein presentment. Under the heading 'Octave of St. Hilary' stands an entry (r. 18) to the following effect:—An assize comes to find (*recognitura*) what patron presented the last parson to a moiety of the church of Leake, the advowson whereof Simon of Kyme and Maud his wife claim against Nicholas 'de Grymmescroft de Leek,' and touching which Simon and Maud say that in the time of Edward I. they (by reason of a moiety of the manor of Leake to which the advowson of a moiety of the church pertains) presented one Ralph of Metringham, their clerk, to the said moiety, and that by his death that moiety is vacant. And Nicholas comes and says that the assize ought not to proceed. He then pleads the fine of 30 Edward I. and makes profert of a 'part' of it. With his plea, and without any formal demurrer, the entry ends, and no subsequent proceedings have been found. As a few weeks later Simon and Maud found that they had no defence to Nicholas's action and Nicholas obtained a writ to the bishop, it seems likely that they dropped their assize.

The discussion in the Year Book relates to this darein presentment. Can the fine without any subsequent presentment be pleaded in bar to the assize (*quod non debet assisa inde fieri*)? As the last presentation is with the plaintiffs, they will be victorious if issue is joined upon the question formulated in the original writ. The strength of the plaintiffs' argument seems to lie in the old doctrine that a right cannot be transferred unless there be a transfer of some material thing, and that consequently the conveyance of an advowson, even by way of fine, is an incomplete act until the transferee has obtained a sort of corporeal seisin by a successful presentation. However, the other proceedings in this case seem to show that by this time the conusee of the fine could use it as a sword (by bringing an action of *quare impedit* against the conusor) even if he could not use it as a shield against the ancient assize of last presentation.

The summary of this case in Maynard's Table (under 'Fine') says when translated, 'Assize of last presentation: defendant pleads in bar the fine of the plaintiff levied in a *warantia cartae*, and does not say whether the [last] presentation was after or before the fine *et morat' pas* [a misprint]. If the fine were executory it would be a clear bar. A fine levied in *warantia cartae* is executed.'

One of our MSS. (viz. *A*) contains a second copy of this case of darein presentment. It then states (apparently from the record) Nicholas's proceedings by way of *scire facias*, and these are made to end with a concord to the effect that Nicholas shall for ever present to the church in accordance with the said fine. A marginal note says in French, 'It appears that one shall not have execution of a fine levied upon a *warantia cartae*, but shall have a *scire facias*.' A writ of execution would be inappropriate if the fine took such a form that it supposed the conusee to be already seised and to have demanded warranty from the conusor.

2. COBHAM *v.* PAYFORER.[1]

Replegiari ou le defendaunt avowa sur un estraunge qe fut present en court et se joint al pleyntif e traversa l'avowrie, et l'avowaunt prie eyde de sa femme etc. Puis la parole demoura saunz jour et le defendaunt et sa femme res[umounz], qe fesoint defaute.

James de Dodingham [2] altrefeitz en la court Edward le Roi piere le Roi Edward etc. suyst vers William Piphre [3] et se pleynt q'a tort prist ces averes. Le quel William awoua sur un Henri de C. par la resoun qe Henri teint de luy et de une tiele sa femme com del dreit sa femme un mees etc. par homage etc., dez queux services etc. William et E. sa femme furent seisi com del dreit sa femme etc. par my la mayn Johan piere Henri etc. Et pur ceo qe le [4] homage Henri fust ariere etc., si awoue il com del dreit E. sa femme. Le quel Henri fut en court [5] et se ioynt au pleintif,[6] et dit qe William ne fust unques seisi com del dreit sa femme par my la mayn soun piere,[7] etc. William pria eide de sa femme, et fut graunté, et bref issit de somoundre la femme, quod mirum videbatur qar ele ne serra [8] mye en ceo cas somouns, enz serra [9] dit au baroun q'il l'eust [10] sa femme ' si sibi viderit [11] expedire.' Issint qe [12] avaunt cel houré le Roi morust, par quai la paroulle etc., et le pleyntif suit un resomouns vers le baroun et sa femme a certein iour etc. A quil iour le baroun ne vint pas ne sa femme etc.[13]

Pass. pria iugement sur le principal, qu'il fut atteint de la torcenouse prise.[14]

Berr.[15] Qaunt le baroun avoit prié eyde de sa femme, avaunt qu'il vindereynt en court le Roy morust, par quai il covent qe vous suetz la graunte destresse a fere venir la femme [16] en heyde a oyer le enqueste etc.

Nota qe *Pass.* dit : Si le barroun veigne [17] a procheyn iour et la femme face defaute, le baroun serra atteynt du principal, pur ceo q'ele est amenable [18] a sa volunté [19] etc.

[1] *Vulg.* p. 3. From *A* : compared with *B*, *D*, *L*. In *A* is a second and shorter version (*A* 2). [2] Cotingham *L*; Cobham *A* 2. Cobham *is right.* [3] Phiphr' *Vulg.*, *B* ; Pyncoun *L*. *It should be* Payforer. [4] qile *A*. [5] fuist oui contra *Vulg. B* ; en court *A*, *L* ; ou (?) court *D*. [6] pleint' *A*, *B* ; pleintif *D*, *L*. [7] *Ins.* prest *B*, *D*, *L*. [8] qele serroit *B* ; qele serreit *D* ; qe ele serra *L*. [9] serreit *L*. [10] eust *B*, *D* ; ust *L*. [11] videbatur *B*, *D*, *Vulg.* [12] qi *A*. [13] jour le baroun ne vient pas, la femme vient *A* 2. [14] Pass. Nous prioms nos damages vers le baron qe ne vient pas *A* 2. [15] Berr. *B*, *D*, *L*, *Vulg.* ; Herle *A*. *In A* 2 *this speech reads thus :* Il vous covent swre la destresse q'il seit d'oyer l'enqueste et eit sa femme oed ly, qar il n'aparust pas puis qe la parole fut sauncz jour etc. [16] *Om.* la femme *Vulg. Interlined in D.* [17] *Ins.* en court *Vulg.*, *D*. [18] menable *B*, *D*, *Vulg.* [19] a la volunte le baron *L*.

2. COBHAM *v.* PAYFORER.[1]

Replevin: the defendant avows upon a stranger in right of his (the defendant's) wife. The stranger appears, joins himself to the plaintiff, and traverses the seisin. The defendant prays aid of his wife. The process for securing her appearance discussed.

James of Cobham before now sued in the court of King Edward, father of the present King, against William Payforer and complained of an unlawful taking of his beasts. And the said William avowed upon one Henry of Cobham, for the reason that Henry held of him [William] and of such a one his wife in her right a messuage etc. by homage etc., and that William and his wife were seised of those services as of her right etc. by the hand of John father of Henry; and because Henry's homage was arrear, he [William] avowed in right of his wife. And the said Henry was in court and joined himself to the plaintiff and said that William was never seised in right of his wife by the hand of Henry's father. William prayed aid of his wife, and this was granted him, and a writ issued to summon the wife, which seemed strange,[2] for in such a case a wife shall not be summoned, but the husband shall be told to produce his wife in court if he think fit so to do. And then the King died, and for that reason the cause [stood over without day]. And now the plaintiff sued a resummons against husband and wife, and at the day therein named neither husband nor wife appeared.

Passeley prayed judgment on the main matter, namely, that the defendant be convicted of the tortious taking.

Bereford, J. When the husband had prayed aid of his wife and before they came into court the King died. Therefore you ought to sue a grand distress to make the wife come into court in aid to hear the inquest.

Note that *Passeley* said: If the husband comes at the next day and the wife makes default, he can be convicted of the principal matter, for his wife is amenable at his will.

[1] Proper names from the record.

[2] There is nothing to show that this criticism of the court's procedure is not a part of the original report.

Note from the Record.

De Banco Rolls, Hilary, Edw. II. (No. 169), r. 27d, and Easter (No. 170), r. 126.

The Rolls show that in the reign of Edward I. James of Cobham brought an action of replevin against William Payforer, who avowed upon Henry of Cobham as holding of William and Lora his wife certain tenements by homage, fealty, the service of a fourth part of a knight's fee, a pair of gilt spurs or 6*d.* a year, and 45*d.* towards the ward of Dover castle every twenty-seven weeks. The avowry was for homage and fealty in arrear, and William added that he could not answer without his wife. It further appears that an order was made that Lora should be summoned. 'Preceptum eciam fuit vicecomiti quod summoneat predictam Loram quod esset hic ad hunc diem etc. ad respondendum predictis Jacobo et Henrico simul cum predicto Willelmo de predicto placito si etc.' Then seemingly the King's death occurred and William and Lora were resummoned for the octave of Hilary in the first year of the new king. (*Note continued on the opposite page.*)

PLACITA DE TERMINO PASCHE ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI PRIMO.

1. PARIS *v.* PAGE.[1]

De transgressione ou excepcioun de vilenage fut aleggé en la persone le pleyntif, qe alegga q'il fut fraunc cetezeyn de L. et avoit esté le vicounte le Roi et fut aldirman. Et pus dit fraunc de fraunc estat etc.

Symon de Parys porta bref de trespas vers H. baillif Sire Robert Toun[2] et plusours autres, et se pleynt qe W. et H. certeyn jour ly pristerent et enprisonerent etc. a tort et encountre la pees etc.

Pass. respoundit pur toutz forpris le baillif qe riens ne ount fait encountre la pees. Et pur le baillif il avowe[3] l'aresteyment[4] par la resoun qe l'avaundit Symoun si est le vileyn l'avaundit R., qi[5] baillif il est, et fut trové a N. en soun ney,[6] le quel vint et ly tendist office de provost, et il le refusa et[7] ne se voleyt justicer etc.

[1] *Vulg.* p. 4. Text from *A*: compared with *B*, *D*, *L*. [2] Tonny *or* Touny *B*, *D*, *L*. [3] avowa *B*; avowea *Vulg.* [4] le resteiment *B*; le resteiement *D*; la rescettement *L*. [5] qe *A*. [6] nie *B*, *D*; fee *L*; me' *Vulg.* [7] *Om.* et *A*.

Note from the Record (*continued*).

Such seems to have been the state of the cause on the Octave of Hilary (20 Jan.) 1 Edward II. Then neither William nor Lora appeared. The sheriff was ordered to distrain William by all his lands and to have his body in court on the quindene of Trinity, 'ita quod idem Willelmus habeat predictam Loram hic ad respondendum simul si etc.' In the Trinity term, on the morrow (June 25) of St. John Baptist, William appeared but not Lora. Another day was given on the morrow (November 12) of St. Martin: 'et dictum est eidem Willelmo quod sit hic in crastino S. Martini et hic habeat predictam Loram si viderit expedire.' On that day William and Lora appeared, and Lora joined herself to William in his answer ('se iungit predicto Willelmo viro suo in respondendo'). They allege seisin of the homage and fealty by the hand of John of Cobham, father of Henry. On this issue is joined, and a jury is to come three weeks from Easter (1309).

PLEAS OF EASTER TERM, 1 EDWARD II. (A.D. 1308.)

1. PARIS *v.* PAGE.[1]

Action for assault and imprisonment. Plea, arrest of a villein in his villein nest. An attempt to reply that the plaintiff is a free citizen of London fails; but the defendant is compelled to assert seisin of the plaintiff as a villein at the time of the assault.

Simon of Paris brought a writ of trespass against Walter Page, bailiff of Sir Robert Tony, and divers others, and complained that on a certain day they took and imprisoned him etc. wrongfully and against the peace etc.

Passeley for all, except [Walter] the bailiff, answered that they had done nothing against the peace. And for the bailiff he avowed the arrest for the reason that Simon is the villein of Robert, whose bailiff Walter is, and was found at Necton in his nest,[2] and Walter tendered to him the office of reeve and he refused and would not submit to justice etc.

[1] Proper names are taken from the record.

[2] For this phrase see Y. B. 21–2 Edw. I., p. 449; 33–5 Edw. I., p. 205.

Toud. reherça l'avouerie, et dit qe a tiel avowerie ne deit il estre r[espoundu], pur ceo qe Symoun est fraunk cetezain de Loundres et ad esté tut ces x. aunz et ad esté vicounte le Roi en mesme la cité et rendu [1] acount [2] al Eschekyr, et ceo averer voloms par record, et unqore huy ceo jour est alderman de la vile,[3] et demaundoms jugement s'il pussent en sa persone vilinage alegger.

Herle. A ceo qu'il dient qu'il est citzayn de Loundres [4] nous n'avoum qe feare, mès nous vous dioms qu'il est vilayn R.[5] de eve et de treve et ses [6] auncestres, ael et besael, et toutz ses [7] auncestres ses [8] terrez tenauntz del [9] manoir de N., et ses [10] auncestres seisi de vileines services des hauncestres Symoun, com a faire rechat de char et de [11] saunk et de fille marier et de eaux talier [12] haut et bas etc., et uncore est seisi de ses freres de mesme le peire et mesme la meire. Et demaundoms jugement etc. si sur luy com sur soun villeyn en soun ney [13] trové ne pusse avowrie faire.

Toud. Fraunk homme et de fraunk estat et eux nyent seisi de luy com de lour vileyn, prest etc.

Ber. Jeo ai oi dire qe [14] un homme fust pris a la bordel [15] et fust [16] pendu, et s'il ust demorré a l'ostel il n'ust [17] eu [18] nul mal etc. Ausint [19] de cest part. S'il ust esté franc cetezeyn, pur quay ne ust il [20] demorré en la cité ?

Ad alium diem *Toud.* se teint sur ceo qu'il ne fut seisi de luy com de soun vileyn ne [21] de ses [22] vileynes services etc.

Pass. La ou il dit qe nous ne sumes [23] seisi de luy com de nostre villayn, il nasquit en nostre velynage,[24] et la commence [25] nostre seisine [26] et nous le [27] trovames en soun ney [28] et la est [29] nostre seisine continué. Jugement.

Berr. Vous pledetz [30] sur la seisine et il pledent sur le dreit,[31] et issint n'averez jammès bon issue de plee.

Herle. Seisie en la forme com nous avoms dit.

Berr. La court ne receivera [32] un tiel travers saunt ceo qe vous diet que vous estes seisi de luy com de vostre vileyn et de ses [33] vileines services.

Et sic fecit. Et alii e contra.

[1] rendi *B*; rendy *L*. [2] acontes *D*. [3] *Ins.* de Loundres *B, D, Vulg.* [4] cyte-zeyn le Roy *L*. [5] R.C. *A*. [6] cez *A*. [7] es *A*. [8] se *A*. [9] dens le *D*. [10] cez *A*. [11] du *A*. [12] tailler *B, L*; tailer *D*. [13] nie *B, D*; ney *L*; me' *Vulg.* [14] Jeo ai ore *A*. [15] burg' *A*; bordel *B, D, L, Vulg.* [16] *Ins.* pris et *B*; prist et *Vulg.* [17] il eust *D*. [18] en *Vulg.* [19] *Or* ansint *A*. [20] *Om.* il *A*. [21] *Om.* de . . . ne *A*; *text from B, Vulg.* [22] cez *A*. [23] *Ins.* pas *D, Vulg.* [24] villein *Vulg.* [25] et comence en *D*; et comensa en *L*; ou commenc' *Vulg.* [26] nostre seisine *B, D, L*; qe nostre somme *A*. [27] lui *B, D, Vulg.*; luy *L*. [28] nie *B, D*; ny *L*; me' *Vulg.* [29] *Om.* est *B, Vulg.*; *ins.* en *D*. [30] pledretz *B*. [31] *Om.* sur le dreit *A*. [32] recovera *A*; restreinera *Vulg.* [33] ces *A*.

Toudeby rehearsed the avowry and said that to this avowry he ought not to be answered, for that Simon is a free citizen of London and such has been these ten years and has been the King's sheriff in the said city and has rendered account at the Exchequer;[1] and this (said he) we will aver by record; and to this very day he is an alderman of the town, and we demand judgment whether they can allege villeinage in his person.

Herle. With what they say about his being a citizen of London[2] we have nothing to do; but we tell you that from granddam and granddam's granddam he is the villein of Robert, and he and all his ancestors, grandsire and grandsire's grandsire, and all those who held his lands in the manor of Necton; and Robert's ancestors were seised of the villein services of Simon's ancestors, such as ransom of flesh and blood, marriage of their daughters, tallaging them high and low, and Robert is still seised of Simon's brothers by the same father and same mother. And we demand judgment whether Robert cannot make avowry upon him as upon his villein found in his nest.

Toudeby. We are ready to aver that he is a free man and of free estate, and they not seised of him as of their villein.

Bereford, J. I have heard tell that a man was taken in a brothel and hanged, and if he had stayed at home no ill would have befallen him. So here. If he was a free citizen, why did not he remain in the city?

At another day *Toudeby* held to the assertion 'not seised of him as of his villein nor of his villein services.'

Passeley. Whereas he says that we were not seised of him as of our villein, he was born in our villeinage, and there our seisin began, and we found him in his nest, and so our seisin is continued. We demand judgment.

Bereford, J. One side pleads on the seisin, and the other side pleads on the right: in that way you will never have an issue.

Herle. Seised in the manner that we have alleged.

Bereford, J. The court will not receive such a traverse. You must say that you are seised of him as your villein and of his villein services.

And so [the defendant's counsel] did. Issue joined.

[1] Simon of Paris was sheriff of London in 1302–3. For his election see R. Sharpe, Letter Book C, p. 114. It appears from the civic Letter Books that he was mercer, alderman, chamberlain, and a very active citizen. For his will see Sharpe, Calendar of Wills, i. 309.

[2] Or 'a citizen of the king.'

Extracts from the Record.

De Banco Roll, Easter, 1 Edw. II. (No. 170), r. 45, Norf.

[Plea.]—Et predictus Walterus dicit quod predictus Simon non debet inde responderi etc. Dicit enim quod ipse predictis die et anno fuit ballivus Roberti de Tony de manerio suo de Neketon. Et dicit quod predictus Simon est villanus predicti Roberti de manerio suo predicto, et tenet villenagium eiusdem Roberti etc., et eciam natus in eodem villenagio. Et dicit quod idem Robertus et omnes antecessores sui a tempore cuius non exstat memoria fuerunt seisiti de antecessoribus predicti Simonis ut de nativis et villanis suis etc. Et dicit quod quia idem Simon eisdem die et anno inventus in villenagio ipsius Roberti, in quo natus fuit, tamquam in nido suo, rebellus [*sic*] fuit, recusans servire predicto domino suo in officio prepositure etc., quod quidem officium idem Walterus cum[1] ballivus etc. eidem Simoni iniunxit recipere ex parte domini sui predicti etc., idem ballivus predictum Simonem, tamquam rebellem et inobedientem domino suo in hac parte etc., attachiavit per corpus suum etc., quousque iustificasset se etc., sicut ei bene licuit.

[Replication.]—Et idem Simon dicit quod ipse est liber homo et libere condicionis, et fuit tempore predicte transgressionis ei facte etc., ita quod predictus Robertus de ipso Simone ut de villano suo non fuit seisitus predictis die et anno. Et hoc paratus est verificare etc.

[Rejoinder by lord and bailiff.]—Et iidem Robertus et ballivus etc. dicunt quod antecessores ipsius Roberti fuerunt seisiti de predicto Simone etc., et similiter idem Robertus predictis die et anno etc. fuit seisitus de eodem Simone ut de villano suo talliando ipsum inter ceteros villanos suos. Et de hoc ponunt se super patriam.

[Joinder of issue.]—Et Simon similiter.

[Verdict.]—Et iuratores dicunt super sacramentum suum quod predictus Simon predictis die et anno fuit liber homo et libere condicionis, et quod predictus Robertus nuncquam fuit seisitus de ipso ut de villano suo. Et dicunt quod predicti Walterus et alii predictis die et anno in regia strata apud Neketon ceperunt ipsum Simonem, et ipsum adduxerunt contra voluntatem suam ad manerium ipsius Roberti in eadem villa et ibidem in prisona detinuerunt ab hora tercia usque ad vesperas, ad dampnum ipsius Simonis centum librarum.

[Judgment.]—Ideo consideratum est quod predictus Simon recuperet dampna sua predicta versus predictos Walterum Page et Galfridum de Tany, et iidem Walterus et Galfridus in misericordia. Dampna c. librarum.

[1] We expect *ut*; but *cum* is here equivalent to the French *comme*, which derives from the Latin *quomodo*.

Note from the Record.

Walter Page of Saham, Nicholas of Walwayn, Geoffrey son of Richard of Noketone [Necton] and Geoffrey de Tony [or Tany] are attached to answer 'Simon of Paris of London' in a plea of assault and imprisonment. The alleged wrong was done at Necton in Norfolk on [14 Aug., 1306] the Sunday next before the Assumption of the Virgin in 34 Edw. I. The usual charges of beating, wounding etc. are made in the count, and damages are laid at 100*l.* The defendants, other than Walter, plead 'not guilty' (*nullam transgressionem fecerunt*). Walter pleads (as set forth on the opposite page) that he was bailiff of Robert de Tony of his manor of Necton, that the plaintiff is Robert's villein, holding villeinage and born in the same villeinage, that Robert and his ancestors from time immemorial were seised of Simon's ancestors as their villeins, that Simon was found in his nest and refused the office of reeve, and that Walter, as well he might, attached Simon by his body for rebellion and disobedience.

The attempt to plead a special replication concerning Simon's status as a free citizen of London has left no trace on the record. He at once pleads (see opposite page) 'free man and of free estate, and Robert not seised of Simon as of his villein.' The record then states that the bailiff was unable to meet this averment without his lord, and that Robert de Tony, who was present in court, joined himself to the bailiff in answering. And Robert and the bailiff said by way of rejoinder (see opposite page) that Robert's ancestors were seised of Simon as of their villein, and that on the day of the trespass Robert was seised of Simon as of his villein by tallaging him among his other villeins. Upon this Simon joins issue. The record is silent as to the attempt of Robert's counsel to obtain an issue more favourable to their client ('he was born our villein and was found in his nest'). They are committed to 'seised of him as of our villein when the arrest was made.'

A jury was ordered for the octave of Michaelmas [1308]. A verdict, however, was not obtained until Trinity quindene 5 Edw. II. [June, 1312]. By that time Robert de Tony, Nicholas Walwayn, and Geoffrey son of Richard were dead. The jurors say upon their oath 'that on the day and year aforesaid Simon was a free man and of free estate, and that Robert never was seised of him as of his villein, and that Walter and the others on the day and year aforesaid in the King's highway at Necton took Simon and led him against his will to Robert's manor in the same town and detained him there in prison from the hour of terce until vespers, to his damage of 100*l.*' Judgment for 100*l.* is given against Walter Page and Geoffrey de Tony, and they are in mercy. The heavy damages given for a few hours' imprisonment will not escape attention: nor the lapse of four years between *venire facias* and verdict.

2. BARKING (ABBESS OF) *v.* WEBBELE.[1]

De convencione ou une Prioresse porte le bref et le tenaunt voleit avoir rendu par fine.

La Prioresse de B. porta bref de covenaunt vers un B. qe vint en court et volleit rendre [2] par fine. Mez les Justices doterent la collusion estre fait a statut, par quai il maunderent al vicounte de mesme le counté qu'il feit venir devaunt eaux xij. del viné de O. Qui [3] vinderent et furent chargez si la Prioresse avoit dreit en ceux tenemenz avaunt la lymitacioun de statut,[4] qe disseint qe la Prioresse avoit dreit en ceaux tenemenz xl. aunz avaunt cez [5] establissementz [6] et q'i n'y avoit nul fraud. Et puis [7] la fine se leva etc.

Extracts from the Record.

De Banco Roll, Hilary, 1 Edw. II. (No. 169), r. 69, Essex.

Et quia dubitatur de fraude inter eos prelocuta contra statutum etc., quo cavetur ne terre vel tenementa ad manum mortuam deveniant etc., nec eciam constat curie Regis hic a quo tempore predicta Abbatissa fuit inde seisita ut de iure ecclesie sue predicte, preceptum [order for a jury] . . . . Juratores dicunt super sacramentum suum quod quedam Matillis de Levelaunde [8] quondam Abbatissa de Berkynge predecessor predicte Abbatisse iam quadraginta annis elapsis fuit seisita de predictis tenementis ut de iure ecclesie sue predicte, et quod nulla est fraus sive collusio inter partes predictas. Ideo habeant cyrographum. Et predicta Abbatissa dat unam marcam pro licencia concordandi.

3. VAUS *v.* BABRAHAM.[9]

Quid iuris ou la tenaunte clama fee tailé par une chartre et le demaundant mist avaunt fyne qe tesmoygna q'ele n'avoit fors a terme de vie etc.

Un *quid iuris clamat* fust porté vers une [10] B. Demaundé fust

[1] *Vulg.* p. 4. From *A* : compared with *B*, *D*, *L* ; Fitz., *Collusion*, 11. [2] respondre *D*, *Vulg.* [3] quil *A*. [4] furent chargez etc. *A*, *Vulg.* ; our text from *L*. [5] les *B*, *Vulg.* ; ses *D*. [6] cel establisement *L*. [7] fraud puis qe *Vulg.*, *B*. [8] Maud Loveland in Monasticon, i. 437. [9] From *A* : compared with *B*, *D*, *L*. *Vulg.* p. 4. [10] un *A*.

2. BARKING (ABBESS OF) *v.* WEBBELE.[1]

If a fine is to be levied in favour of a religious house, an inquest touching the collusive evasion of the Statute of Mortmain may be ordered by the Court.[1]

The [Abbess of Barking][2] brought a writ of covenant against one [Thomas of Webbele], who came into court and desired to render the tenements by fine. But the Justices suspected collusion against the Statute, and therefore they commanded the sheriff of the county to cause to come before them twelve men of the neighbourhood of O. Who came and were charged to say whether the Abbess had right in those tenements before the limitation of the Statute. And they said that she had right in them forty years before that Establishment[3] and that there was no fraud. Afterwards the fine was levied.

Note from the Record.

Thomas of Webbele and Annora his wife are summoned to answer the Abbess of Barking in a plea of covenant touching certain tenements in Barking and Eastham. And they make concord: to wit, Thomas and Annora confess the tenements to be the right of the Abbess and remise and quitclaim them; and they pray that a fine be levied. The Court's doubt as to a collusive evasion of the Statute of Mortmain is then stated: (see the opposite page). A jury therefore is to come three weeks after Easter, and notice of the proceedings is to be given to the chief lords, mediate and immediate. Then a *postea* states that on Easter three weeks the lords do not come, but the jurors come and give a verdict (printed on the opposite page) which denies collusion and asserts the antiquity of the Abbess's right. 'Therefore let them have their chirograph. And the Abbess gives one mark for licence to make the concord.'

3. VAUS *v.* BABRAHAM.[4]

In a *quid iuris clamat* for the attornment of a tenant, she claims a fee under a charter. A fine of later date is produced to show that she has only a life estate. Inconclusive debate.

A *quid iuris clamat* was brought against a woman. She was

[1] See Stat. West. II. (13 Edw. I.) c. 32, and Coke, Sec. Inst. p. 429.

[2] Proper names taken from the record of what seems to be the case that is here reported.

[3] Meaning apparently the Statute of Mortmain, 7 Edw. I.

[4] Proper names from the record. We endeavour to give a free translation of a briefly reported case. The *quid iuris clamat* was a judicial writ. It supposes that a fine of a reversion is being levied. See Reg. Brev. Jud., 36 57.

quel estat ele clama en les tenemenz.[1] Les queux etc. B. clama [2] par une chatre en fee taillé.

Frisk. Mesme celuy qi [3] chartir il mettent avaunt graunta par fine levé en la court etc. a R. soun baroun et a li [4] et a les heirs R., et issint q'ele n'ad estat sy noun a terme de vie. Jugement si ele ne deyve [5] attorner, desicom les heirs celuy qe fit la reconissaunce [6] furent enheritez auxi com la fine suppose.

Herle. Vous ne poetz dedire qe l'estat qe nous avoms n'est par chartir et par possessioun a nous lyveré. Et ceo prove la fyne, qar ele [7] leva sur bref de garrauntie de chartir qe suppose doun precedent et nous seisiz; et [8] demaundoms jugement si par nule fine de plus tardif temps, de quel fine nous ne clamoms [9] reyns, pussés nostre estat enpeyrer [10] ou chaunger,[11] le quel estat nous acrust avaunt la fine par la chartre et est continué [12] en nostre persone.

Pass. Nous sumes a un de la tenaunce et de la rescet, mès nyent de la manier de la rescet, dount desicom nous avoms mys avaunt fyne, qe seyt la plus haut choce qe continge,[13] jugement [14] si vous plus haut estat ou autre choce qe la fine suppose pusset aver ou clamer.

Frisk. Sire, si vous maysset [15] avaunt chartre ou escrit qe testmoigne la reversioun nient a lui [16] estre, jeo [17] serrai receu d'averer [18] la forme, nient encountre esteaunt la chartre. Et demaundoms jugement si encountre la fine, ou nul averment est receyvable, qe testmoygne la forme estre tiel de la revercioun, si a [19] nul chartre qe [20] testmoyne la forme estre autre qe la fine suppose en anientissment [21] de la fine se peusse [22] prendre.

Et sic adiornantur.[23]

Note from the Record.

De Banco Roll, Easter, 1 Edw. II. (No. 170), r. 54, Camb.

Despite some discrepancies, the above seems to be a report of the following case. By the fine that is now being levied Maud Aune (?) of Bottisham ['Bodekesham'] has granted a messuage in Cambridge to Robert de Vaus (?); and Alan of Babraham ['Badburgham'] and

[1] *Ins.* et *A.* [2] dona *B*, *Vulg.* [3] qe *A.* [4] *Om.* et a li *L*; *interlined in D.* [5] doine *Vulg.* [6] reconissauntz *A.* [7] *Ins.* se *B*, *Vulg.* [8] *Om.* et *A*, *B*; *ins. D*, *L.* [9] fyn vous ne chalang' *L.* [10] aperir *B*, *Vulg.*; apeirer *D.* [11] chalanger *L.* [12] contenue *B*; contenu *D*; contein *Vulg.* [13] chose que soit *B*, *D*, *L*, *Vulg.* [14] *Om.* jugement *A.* [15] meissetz *B*, *D*; meisset *L.* [16] *Om.* nient a lui *A*, *D.* [17] noe *A*; ceo *L.* [18] daver *A.* [19] si a *L*; serra *A*, *Vulg.* [20] et *Vulg.* [21] avientisement *Vulg.*; anentisement *D.* [22] *Ins.* en nule manere *B.* [23] adiornetur *A*; adiornentur *L.*

called upon to say what estate she held in the tenements, and she claimed fee tail under a charter.[1]

Friskeney [for the demandant]. The person whose charter they put forward granted the tenements by a fine levied in court to this woman's husband and to her and to the husband's heirs, so that she has only an estate for life. We pray judgment whether she ought not to attorn, since the heirs of the person who made the conusance[2] were made inheritors in the manner supposed by the fine.

Herle [for the tenant]. You cannot deny that the estate is ours by charter and by livery of possession. And the fine proves this, for it was levied upon a writ of *warantia cartae* which supposes a precedent gift and our seisin. We pray judgment whether by any fine of later date (under which fine we claim nothing) you can impair or change our estate, which estate accrued to us by the charter before the fine and is continued in our person.

Passeley [for the demandant]. We are at one as to the tenancy and the receipt [of the tenements], but not as to the manner of the receipt. And, since we have put forward a fine (than which there can be nothing higher), we pray judgment whether you can have or claim any higher or other estate than the fine supposes.

Friskeney [for the demandant]. Sir, if in a *quid iuris clamat* the tenant put forward writing or charter showing that the reversion was not in the demandant, the latter (notwithstanding the charter) would be received to aver the form of the gift under which the tenements were held. And we pray judgment whether against a fine (where no averment would be receivable), which witnesses a particular form of reversion, she [the tenant] can, to the annulment of the fine, betake herself to a charter which testifies the form of the gift to be other than that supposed by the fine.

Case adjourned.

Note from the Record (*continued*).

Margaret his wife are called upon to say what right they claim in the tenements. They appear and say that Robert of Soham ['Saham'] and Cristiana his wife gave and granted to Richard of Bottisham, of Cambridge (sometime Margaret's husband), and to Margaret, the said

[1] Co. Lit. 316*b*: 'against a tenant in tail no *quid juris clamat* lieth.' The record, however, seems to show that there was no estate tail in the case. The question was between fee simple and estate for life.

[2] So the text. See our note from the record. The report can be made to agree with the record if we read 'the heirs of the conusee,' *i.e.* the woman's husband.

Note from the Record (*continued*).

messuage, with all the right therein that might come to them on the death of one Helewise, who held the third part by way of dower, to hold to Richard and Margaret and their heirs and (*vel*) assigns for ever. They produce a charter witnessing this gift, and it is dated at Cambridge on [4 April 1295] the morrow of Easter in 23 Edw. I. They add that afterwards Helewise gave and granted the third part to Richard and Margaret and their heirs and (*vel*) assigns, and they produce a writing which witnesses this. They also say that from the date of the charter and writing Richard and Margaret during the whole of Richard's life, and Margaret after his death, have continued their seisin until now. So they say that Margaret claims to hold the messuage to herself and her heirs by virtue of the said feoffment. And Robert [the conusee under the fine that is now being levied] says that Margaret cannot claim a fee, for by a fine levied here before J. of Metingham and his fellows on [8 July 1295] the quindene of St. John Baptist in 23 Edw. I. between Richard of Bottisham and Margaret his wife, by W. de B., the attorney of Margaret, plaintiffs, and Robert of Soham and Cristiana his wife, impedients, in a plea of warranty of charter, Robert and Cristiana made conusance that the messuage was the right of Richard, as that which Richard and Margaret have by the gift of Robert and Cristiana, to hold to Richard and Margaret 'and the heirs of Richard.' An offer is made to aver this fine by the record of the foot of the fine. And whereas the said fine records that Richard and Margaret had the messuage by the gift of Robert and Cristiana, to hold to Richard and Margaret and the heirs of Richard, judgment is prayed whether Margaret can claim a fee against the tenor of the fine to which she was a party.

To this Alan and Margaret reply that the estate and entry which she has in the messuage she had with her late husband by virtue of the said feoffment; and that until now she has always continued the same estate

4. ANON.[1]

De dote, ou le tenaunt avoit fet defaute après apparaunce, et avaunt qe le petit *cape* fut retourné le Roy morust etc. Et quant la resomouns etc. le demaundaunt [se prist] [2] a la defaute.

Une femme porta bref de dower vers un tenaunt qe voucha a garraunt, qe fut somouns et vint en court. Le tenaunt fit defaute

[1] *Vulg.* p. 5. Text from *A* : compared with *B*, *D*, *L*. Fitz., *Saver de defaute*, 70.
[2] etc. *A*.

Note from the Record (*continued*).

without any interruption, as they are ready to aver by the country; and that Robert [the now claimant] cannot show that at any time after the feoffment Margaret came into a court of record and 'devolved' herself by grant or conusance from her right and fee under the feoffment. And they pray judgment whether she can be precluded from claiming fee and right by a fine which supposes that she was present in court at its levying, not personally, but by attorney.

A day to hear judgment is given on Trinity quindene. At that day Robert is asked by the justices whether he will admit the averment tendered by Margaret and her husband. He says that he will not, but instantly demands judgment. Adjournments to the morrow of Martinmas and then to the quindene of Easter [1309] are recorded. Ultimately judgment is given: 'And whereas Margaret, Alan's wife, claims right and fee in the tenements by virtue of the said charter, and Robert does not care to admit (*non curat admittere*) the averment which Alan and Margaret tender, therefore it is considered that Alan and Margaret go hence without day and that Robert take nothing, etc.'

The point decided seems to be the following: Under a charter a husband and wife are enfeoffed to hold to them 'and their heirs.' A fine is then levied (probably by way of further assurance) whereby the feoffor makes conusance of a feoffment to the husband and wife 'and the heirs of the husband.' (We may perhaps infer that the variance between the two limitations was due to some mistake.) The fine said that the wife was present by attorney, not that she was present in person. The husband and wife had been put in seisin under the feoffment and continued their seisin, and after the husband's death the wife remained seised. *Held* that, despite the fine, she was seised in fee, and that consequently she could not be compelled by a *quid iuris clamat* to attorn as tenant for life to a person who (presumably) claimed under the heir of her late husband.

4. ANON.

A tenant in an action vouches to warranty and then makes default. Before the petty *cape* is returned the King dies. The tenant is resummoned and appears. He cannot be called upon to save his default.

A woman brought a writ of dower against a tenant. He vouched a warrantor, who was summoned and appeared. The tenant made

par quoi le petit *cape* issit. Pus le Roi morust. Le demaundaunt suyt la resomouns. Le tenaunt vint en court, et le demandaunt pria q'il savast sa defaute qu'il avoit fet. Le tenaunt dit qu'il n'avoit mestir, qar il ne fut [1] pas somons a respoundre a nul defaute ne a nul terre prise par le petit *cape*. Et d'aultre part nous sumes [2] sienz [3] par le resomouns en mesme l'estat qe nous fumes avaunt la mort le Roi, et a cel [4] houre n'avyoms nul mestir a respoundre al nul defaute, ne par consequent ore.

Malm.[5] Si vous ussez fait defaute en temps le Roy qe mort est, et la terre prisse, et vous nient somouns par le petit *cape*, entendetz vous, depuis qe vous estes en court, qe la court vous resceyvera [6] si la [7] qe vous avez [8] savé [9] la defaute.

Herle. Sire, oyl, mès la ou le bref [10] veot [11] qu'il seit somouns a oyer soun jugement, dount si ele ne seit sauvé,[12] la court ne ly resceyvera, mès icy la court n'ad mye pouer de agarder seisine de terre ne a chacer la partie a sauver [13] la defaute.

Et a ceo s'accorda [14] *Berr.*

5. ANON.[15]

Scire facias, ou piert qe si le tenaunt ne veygne pas al primer jour il perdra respounce.

Mestre Adam de H. porta le *scire facias* vers un H. de une dette qe fust conu en baunk après l'an e le iour. La partie defendaunt [16] fit atourné, et il voleyt avoir essoné soun mester.[17]

Herle. L'asoin ne gist pas pur le defendaunt en ceo cas.

Berr. dit a le 'tourné q'il bousonoureit qe soun mestre fut en propre persone. Et puis le 'tourné pria alouaunce de ses [18] aquitaunces [19] q'il avoyt. Mès les Justices disoint qu'il vint trop tard, quia debuit venisse primo die. Et ex hoc nota qe en le *scire facias* si le defendaunt etc. ou le tenaunt en plee de terre ne vigne au premir jour, il perderont,[20] issint qu'il ne serrount [21] receu d'allegger quitclaim ou aultre chose, tut veigne il [22] lendemeyn etc.

[1] fait *A*; fuist *B*; fu *D*. [2] *Ins.* ore *L*. [3] teniz *Vulg.*; cienz *B*; ceynz *D*, *L*. [4] tiele *L*; celle *D*. [5] Malyn *A*. [6] sauvera *Vulg. B*. [7] einz *Vulg.*, *B*; si la *D*. [8] avietz *B*; eyez *L*. [9] sauve *L*. [10] Herle ad idem ou le bref *Fitz.*; mes la *seems out of place*. [11] voet *D*, *L*. [12] seyve *A*; sauve *L*; save *D*. [13] savir *A*. [14] si agard *A*; saccorda *Vulg.*; acorda *L*. [15] *Vulg.* p. 5. Text from *A*: compared with *B*, *D*, *L*. [16] jour le def' *B*; jour def' *D*. [17] mestre *L*; maistre *D*. [18] ces *A*. [19] aquitauns *A*. [20] perdrount *B*; perde *L*. [21] serreit *L*. [22] *Ins.* en *L*.

default, so the petty *cape* issued. Then the King died.[1] The demandant sued a resummons. The tenant appeared, and the demandant prayed that the tenant might save his default. The tenant said that he had no need to do that, for he was not summoned to answer for any default or touching any land taken under the petty *cape*. Moreover [said he], we are here by the resummons in the state in which we were before the King's death, and at that time we had no need to answer touching any default, and consequently we have no need to do so now.

Malberthorpe. If you had made default in the time of the late King and the land had been seized by the petty *cape* and you had not been summoned, think you that after that, when you were in court, the court would receive you until you had saved your default?

Herle. Sir, what you urge is true where the writ wills that a man be summoned to hear his judgment; then, if his default be not saved, the court will not receive him. Here, however, the court has no power to award seisin of the land nor to drive the party to save the default.

Bereford, J. agreed with this.

5. ANON.

Scire facias. Failure of defendant to come on first day and consequent loss of right to plead a release.

Master Adam of H. brought a *scire facias* against one H. for a debt confessed in the Bench, the year and day having expired. The defendant made an attorney who desired to essoin his master.

Herle. In this case an essoin does not lie for the defendant.

Bereford, J. told the attorney that his master must appear in proper person. And afterwards the attorney prayed that certain acquittances which he had might be allowed him. The Justices, however, said that he came too late, for he ought to have come on the first day.

Note therefore that a defendant in a *scire facias* or a tenant in a plea of land, if he does not come on the first day, will lose in such wise that he will not be allowed to allege a quitclaim or other matter, albeit he comes on the morrow.[2]

[1] Apparently before the petty *cape* was returned.

[2] 'In *scire facias* for a debt confessed the tenant [defendant] cannot plead a release unless he comes on the first day. So in real actions.'—Maynard's Table under 'Jour en Court.'

6. ANON.[1]

De dote, ou le tenaunt clama garde, nient nomé gardein. Et le bref abaty.

Bref de douuer fust porté vers un homme et sa femme.

Toud. pur le tenaunt et pur la femme: Vous dyoms qu'il ne clayment[2] rienz en lez tenemenz synoun garde par[3] le nounage un tiel, qi teint de luy ceaux tenemenz par service de chivalerie, nient nomé gardeyn.[4] Jugement de bref.

Le demandaunt. Quai r[espount] l'autre ?[5]

Hunt. Si le bref se abate en partie, il abatera en tut.[6]

Et cassatur breve.

7. ANON.[7]

Replegiari, ou l'avowaunt avowa pur aultres services qe furent contenutz en la chartre soun auncestre fait al tenaunt.

En un[8] prise des avers l'avowrie fut[9] pur[10] rente serviz et l'autre[11] seisi[12] par my la mayn le pleyntif.

Laufer. La ou il avowe pur rent serviz, nous vous dioms qe soun[13] auncestre nous enfeffa de ceaux tenemenz par cest chartre etc. Jugement si pur aultres etc. pusse avowrie fere.

Hunt. Seisi par my vostre mayn puis la confeccioun de cest chartre dez serviz pur qeux nous avoms avowé, prest etc.

Laufer. Est ceo le fait vostre auncestre ou noun ?

Hunt. ne put dedire, mès il se teint a la seisine.

Ber.[14] Faitez[15] vostre avowrie acordaunt a vostre fait.

Et sic fecit. Et puis la partie traversa qe de services contenutz en la chartre reins ariere, prest etc. Alii econtra.

[1] *Vulg.* p. 5. Text from *A*: compared with *B*, *D*, *L*, *P*. [2] Toud. pur le tenaunt demanda jugement du bref qar le bref vent vers eux ij. cum devers ij. joynt tenaunz e la femme vous dit qe ele ne cleyme *P*. [3] pur *D*. [4] *Ins.* nyent *A*. [5] Some MSS. seem to give *quei responez al autre*. [6] partie ergo en le tut *L*. [7] *Vulg.* p. 5. Text from *A*: compared with *B*, *D*, *L*. [8] une *B*, *L*. [9] *Ins.* faite *D*. [10] *Ins.* tut *A*. [11] *Om.* lautre *B*, *Vulg.* [12] et lya la seisine *L*. [13] vostre *D*. [14] Ber. *B*, *L*, *Vulg.*, *and probably D*; Herle *A*. [15] Faites *B*, *D*.

6. ANON.

Writ against husband and wife abated where the wife holds as guardian and is not described as such.

A writ of dower was brought against a man and his wife.

Toudeby for the tenant and the wife: The writ comes against them as though they were joint tenants, and the wife tells you that she claims nothing in the land except a wardship by reason of the nonage of such a one who holds these tenements of her by knight's service; and [in the writ] she is not called guardian. Judgment of the writ.

The demandant. What does the other one [the husband] answer?

Hunt. If the writ is abated in part it is wholly abated.

The writ was quashed.

7. ANON.

Replevin. Avowry. Seisin of services exceeding those mentioned in a charter made by avowant's ancestor.

In an action for taking beasts the avowry was for rent service, and seisin by the hand of the plaintiff was alleged.

Laufer. Whereas he avows for rent service, we tell you that his ancestor enfeoffed us of these tenements by this charter etc. Judgment, whether he can avow for services other [than those mentioned in this charter].

Hunt. Seised by your hand, after the making of this charter, of the services for which we have avowed. Ready etc.

Laufer. Is this the deed of your ancestor, or is it not?

Hunt. could not deny, but held to the seisin.

Bereford, J. Make your avowry according to the deed.

He did this. And the other party traversed, saying that of the services contained in the charter nothing was in arrear; and that he was ready [to aver]. Issue joined.

8. NEVILLE *v.* ROKELE.[1]

Deceyte ou piert qe homme irra al examynement de un somnour en absence del autre, et s'il testmoigne la nonsomounce le pleintif reavera sa terre.

Une femme porta soun bref de dower vers un tenaunt qe fit defaute. Le graunt *cape* issit. Le vicounte retourna qe la partie fust somouns et la terre prise. Et le tenaunt autrefoithe fist defaute, par quay seisine de terre fust agardé. Puis le tenaunt porta bref de deseit vers le viscounte et vers les somnours.[2] Le un des somnours [2] fust en court, l'autre fist defaulte. Celuy qe aparust fust examiné s'il fut a fair le somouns, qi dit qe noun.

Herle. Nous entendomps qe le ij. somnours deyvent estre examynez joyntement. L'un n'est mye en court. Par quai nous entendomps qe vous ne poetz al examinement del un aler sauntz l'autre.

Berr. Depuis qe ley de terre voit[3] q'il seit somouns par ij.[4] et tut vousist l'autre testmoiner qu'il fut[5] somouns par luy, ceo ne put ore valer, par quay la somouns adounc ne fut pas fait solom ley de terre. Par quai agarde la court qe le tenaunt reeit sa seisine etc.

Extract from the Record.

De Banco Roll, Easter, 1 Edw. II. (No. 170), r. 5, Hertf.

Johannes Imphey unus primorum summonitorum venit, et eciam predictus Ricardus atte Broke et Elias Bercarius secundi summonitores etc. veniunt.

Et predictus Johannes primus summonitor etc., iuratus et examinatus per iusticiarios, dicit quod ipse nunquam summonuit predictos Johannem [de Neville] et Dyonisiam quod essent hic ad predictam quindenam S. Michaelis ad respondendum predicte Matillidi in predicto placito. Et predicti Ricardus et Elias, iurati et separatim examinati, bene dicunt quod ipsi interfuissent capcioni predicti prati in manum domini Regis et quod ipsi summonuerunt predictos Johannem et Dyonisiam quod essent hic in crastino S. Martini proximo post predictam quindenam S. Michaelis, set de prima summonicione etc. nichil sciunt etc. (*Extract continued on the opposite page.*)

[1] *Vulg.* p. 5. Text from *A*: compared with *B*, *D*, *L*. This case is Fitz. *Disceit*, 48. [2] In the singular, *A*. In neither case is the exact form of the word beyond doubt. The other MSS. give only 'som.' [3] veot *B*; voet *D*, *L*. [4] par lun *L*; par deux *B*; par ij. *D*. [5] sount *A*; fuist *Vulg.*; *om. D*.

8. NEVILLE *v.* ROKELE.[1]

Deceit of Court. Examination by the Court of persons who are returned as summoners, but who, it is alleged, made no summons. A summons by one summoner is insufficient.

A woman brought her writ of dower against a tenant who made default. The grand *cape* issued. The sheriff returned that the party was summoned and the land taken. And the tenant again made default, wherefore seisin was awarded [to the demandant]. Afterwards the tenant brought a writ of deceit against the sheriff and the summoners. The one summoner was before the court; the other made default. The one who appeared was examined as to whether he was at the making of the summons, and he said that he was not.

Herle. We understand that the two summoners should be examined jointly. One of them is not in court. We understand that you cannot proceed to the examination of the one without the other.

Bereford, J. The law of the land requires that the tenant be summoned by two; and, even if the other summoner were ready to testify that he summoned the tenant, that would be of no avail, for the summons was not made according to the law of the land. Therefore the Court awards that the tenant[2] have her seisin back again.

Extract from the Record (*continued*).

Ideo consideratum est quod predicti Johannes et Dyonisia rehabeant seisinam suam de predicto prato cum pertinenciis. Et predicta Matillis capiatur etc.

Postea in crastino Animarum anno regni domini Regis nunc secundo venit predicta Matillis et fecit finem cum domino Rege per quadraginta denarios per plegium Martini Jurdon de comitatu Hertfordie etc. Ideo ipsa inde quieta.

Note from the Record.

It was alleged by John de Neville and Denise, his wife, that Maud, formerly wife of Richard de la Rokele, had falsely and in deceit of the court recovered against them as her dower a third part of a certain meadow in 'Brathyngge' (Braughing) as upon a default made by John and Denise, whereas they never were summoned a first time, nor was the land taken into the King's hand, nor were they again summoned. So the sheriff was to

[1] Proper names from the record.
[2] The plaintiff in the writ of deceit was the tenant in the principal action.

Note from the Record (*continued*).

cause John Imphey (or Impey) and William atte Morthive (?), who were returned as first summoners, and John Imphey, the said William, Richard atte Broke and Elias Shepherd (Bercarium) as those on whose view the land was seised, and the said Richard and Elias as the second summoners, to come before the Court. On the octave of Trinity, 1 Edward II. (1308), John, Richard, and Elias came. Then (as set forth in the extract on p. 19).

9. ETTON *v.* BARNE.[1]

De transgressione de clauso fracto, ou le defendaunt avowa par cause. Ou piert qe si ma comune seit tut parclos jeo purra avower le desturber.

Johan de Hostoun [2] porta soun bref de trespass vers la persone de E. pur quai certeyn iour, an et lieu, il et aultres desconuz [3] vindreint a force et as armes a soun boys de S. et soun clos debrosa et les burgouns de soun boys copa et emporta a tort. Et le bref voleyt 'clausum [4] suum fregerunt et germina [5] bosci sui succiderunt [6] et asportaverunt etc.'

Toud. pur toux, estre [7] la parsone, qe nul tort etc. Et la parsone dit [8] qu'il deit communer ove tut manier [9] dez averes etc. par cest chartre, et vous dit qu'il ala ovesqe ses [10] bestes en sa [11] comune com [12] bein lui [13] lust sauntz tort feare ; et la ou il dit qe nous debrosames soun clos, nous vous dioms qe ceo ne fut pas soun clos, mès il commencea d'encloer [14] nostre comune et nous luy desturbames cum bien nous lust etc.

Herle.[15] Nous voloms averrir nostre pleynt.

Berr. Fust ceo tut parclos ? [16]

Hunt. Nous dioms qu'il debrusa [17] nostre clos en la forme com nous avoms [18] pleynt.[19]

Berr. Tut usoit il [20] comune et vous ly ussez enparké et il ussent destourbé,[21] il ussent fait tort ; mès si clos [22] fust a encloer il pount avowablement faire destourber e debrusure,[23] pur quai

[1] *Vulg.* p. 6. Text from *A* : compared with *B*, *D*, *L*. The marginal note in *A* is not very legible, and seems to contradict the decision. A later hand has set a *quere* against it. [2] Ostover *Vulg.* [3] destountz *Vulg.* [4] claustrum *D*, *L*. [5] germenta *B*, *D*, *L*. [6] succederunt *L*. [7] *This* estre *is the Latin* extra. [8] deit *A*. *Ins.* qe le lieu ou il dit estre son boys si est un marreis ou le persone *L*. [9] maneres *D*. [10] cez *A*. [11] la *B*. [12] *Om.* com *A*. [13] lieu *A*. [14] denclore *B*, *D* ; de enclore *L*. [15] Hedon *L*. [16] tout vostre clos *B*, *D*, *L*, *Vulg*. [17] *Ins.* tout *A* ; *om. B*, *D*, *L*, *Vulg*. [18] sumes *B*, *Vulg*. [19] Repeat this question and answer, *A*. [20] eussent il *B*, *D*. [21] debrusee *L*. [22] chose *B*, *D*, *L*, *Vulg*. [23] *Om.* e debrusure *A*, *L*, *D* ; *ins. B*, *Vulg*.

Note from the Record (*continued*).

John was sworn, and on examination by the justices said that he did not make the first summons. The Nevilles recovered seisin, and an order to imprison Maud was made. On November 3, 1308, she made fine with forty pence and was quit. The record takes no notice of the attempt made by Maud's counsel to prevent the examination of one summoner in the absence of his fellow.

9. ETTON *v.* BARNE.[1]

Semble that where land which is subject to rights of common has been completely enclosed for a year and more the commoners are not justified in breaking the close.[2]

Ivo of Etton brought his writ of trespass against the parson of Gilling, for that at a certain time and place he and others unknown came with force and arms to his wood at Gilling and broke his close and cut the shoots of his trees, and carried them away wrongfully. And the writ ran: 'clausum suum fregerunt et germina bosci sui succiderunt et asportaverunt etc.'

Toudeby, for all except the parson, pleaded *Nul tort etc.* And the parson said that he ought to have common for all manner of beasts by virtue of a charter which he produced. And he tells you that he went with his beasts into his common, as well he might without doing wrong; and whereas the plaintiff tells you that the parson broke his close, we say that it was not his close; but he began to enclose our common, and we disturbed him, as well we might.

Herle. We will aver our plaint.

Bereford, J. Was it fully enclosed?

Hunt. We say that he broke our close in the manner that we have complained of.

Bereford, J. Albeit if they had common and you impounded their beasts, if they disturbed you they would have done wrong, yet if an enclosure is being made they can avowably disturb you and

[1] Proper names from the record.

[2] To allow self-help in such a case would hardly be compatible with the protection given to possession by the assize of novel disseisin, which action has not yet lost its rigorously possessory character.

ne[1] responez vous si ceo fut parclos[2] ou noun, et de combien de temps ?

Toud. Nient parclos, prest etc.

Herle.[3] Parclos un an et plus, prest etc.

Et alii econtra.

Extracts from the Record.

De Banco Roll, Easter, 1 Edward II. (No. 170), r. 142, Ebor.

[The parson's plea.]—Predictus Willelmus de Waltone persona dicit quod predictus Ivo concessit et confirmavit cuidam Magistro Waltero quondam persone ecclesie predicte predecessori ipsius Willelmi et successoribus suis et omnibus hominibus eorum de familia sua et tenentibus suis tam de ecclesia quam aliis liberam pasturam ad omnimoda animalia sua in omnibus locis, pasturis et boscis infra territorium de Gyllinge (except' bosc' de Hardeknut et Lostechoch) imperpetuum. Et profert quamdam partem cuiusdam scripti inde inter eos cyrographati, que hoc testatur. Et dicit quod locus in quo predictus Ivo queritur predictas transgressiones fieri vocatur Estker, et quod ipse seisitus est de communa pasture sue in eodem loco pretextu predicti scripti, et quia predictus Ivo inceperat includere predictum locum ad ipsum Willelmum de communa pastura [*sic*] sua ibidem habenda excludendum, idem Willelmus et predictus Thomas et alii, preter predictum Walterum, predictum Ivonem hoc facere non permiserunt, et pasturam suam cum averiis suis in loco predicto intraverunt et depasti fuerunt, sicut eis bene licuit virtute concessionis ipsius Ivonis predicte, absque aliqua transgressione ei contra pacem etc. inde facienda etc.

[Replication.]—Et Ivo dicit quod predicti Walterus, Willelmus et alii per hoc se excusare non possunt in hac parte, quia dicit quod predictus locus predictis die et anno fuit plene inclusus, et quod idem Ivo locum illum tenuit integre inclusum per unum annum ante diem predictum et[4] quod predicti Walterus et alii clausum predictum fregerunt et transgressionem predictam vi et armis fecerunt sicut queritur. Et hoc petit quod inquiratur per patriam.

[Joinder of issue.]—Et Walterus et alii similiter.

10. MAUNDEVILLE *v.* FITZPAYN.[5]

De dote, ou le tenaunt dit qe le baroun la femme fut en vie. Ou piert q'il alegga sa mort en estraunge terre, e puis professioun en la persone le baroun e la femme, e receu.

Une femme porta bref de dower etc.

Herle. Dower ne devez avoir qar vostre barroun est en pleyn[6] vie.

[1] *Om.* ne *Vulg.*, *B*, *L*; *it stands in A*, *D*. [2] vostre clos *B*, *Vulg.*; parclos *A*, *D*, *L*. [3] Ber. *B*, *Vulg.* [4] *Om.* et *Roll.* [5] *Vulg.* p. 6. Text from *A*: compared with *B*, *D*, *L*, *P*. [6] *Om.* pleyn *B*, *D*, *L*, *Vulg.*

break it down. Wherefore you should say whether this place was fully enclosed or not, and how long it had been enclosed.

Toudeby. Not fully enclosed. Ready.

Herle. Fully enclosed this year and more. Ready.

Issue joined.

Note from the Record.

Twelve persons (including Walter Barne [or Barue] of Gilling and William of Walton, parson of the church of Gilling) are attached to answer Ivo of Ettone for that they broke his close at Gilling ('Gyllinge in Rydale') and with certain beasts depastured the shoots of his coppice ('et germina bosci sui cedui ibidem cum quibusdam averiis depasti fuerunt'). The parson justifies the act by the plea printed on the opposite page, to the effect that Ivo granted to one of the parson's predecessors pasture for all manner of beasts in the territory of Gilling, and that under this deed the defendant parson was seised of common of pasture in the *locus in quo*, and that Ivo had begun to enclose that place, and that the parson and the other defendants (except Walter) would not permit him to do so. Walter of Gilling pleads a separate defence, alleging that he was seised of common of pasture in the said place for all manner of beasts after the carrying of the hay, and that he and his ancestors were seised in past times and that he depastured his beasts in the said place, as well he might, without any trespass. Then Ivo replies that the defendants cannot excuse themselves by this plea, for the place in question was fully enclosed for a year before the trespass; and he prays that this be inquired by the country. On this replication issue was joined by all the defendants. A jury was ordered for Michaelmas three weeks; but no verdict is given on the roll.

10. MAUNDEVILLE *v.* FITZPAYN.[1]

In an action of dower where the tenant pleads that the demandant has a husband living, is the tenant bound to say where the husband lives, or must she say where he died? The tenant is suffered to amend his plea by saying that both husband and wife are professed in religion. An inquiry by the bishop as to the wife's profession is ordered.

A woman brought a writ of dower.

Herle. Dower you cannot have, for your husband is alive.

[1] Proper names from the record.

Will.[1] Ou en vie? Qar si ore en vie si peut ore estre issint et demeyn xl. lues[2] de scy.

Hedon.[3] A eux a tender l'averement[4] ou en vie, qar par la excepcioun si sount il a barrer nous de recoverir dower de sa mort. Par quei a vous est a dire ou en vie.[5]

Pass. Ley entend plus tost sa vie qe sa mort jeskes le contrari soit trové.[6] Pur ceo est a vous a dire ou mort pur meyntenir vostre accioun.

Will. Mort en la vile de Ypota[7] en la mier[8] de Grez.[9]

Toud. Mesme cest femme et soun barroun entrerent en ordre de Saint Johan de Jerusalem en tiel lieu en l'evesché de Durheme et illeuques furrent profès, et demandoms jugement si ele[10] pusse accioun avoir.

Wilbi. Nous prioms vos recordz[11] qe nous vous dioms qe nostre[12] baroun fust mort en[13] tiele vile, et il disseint qu'il fut en vie. Et sur ceo isserent d'enparler et ore dounent un respouns qe comprent divers issues en sey, qu'il est en pleyn vie et en tiel ordre, issint l'un chet en averrement, l'autre par bref a le evesqe,[14] et demaundoms iugement.

Mès pus dit *Wilby* qu'il n'entrast[15] en nul[16] ordre ne ne fust profès.

Et ideo inquiratur etc.

Note from the Record.

De Banco Roll, Easter, 1 Edw. II. (No. 170), r. 108, Dorset.

Despite some appearance to the contrary, the case here reported seems to be that of which the record is as follows:—Robergia, wife that was of John de Maundeville, demands against Robert Fitzpayn a third part of the manor of Marshwood ('Mershwode') and of the hundred of Whitchurch ('Whychirche') as her dower. Without anything being said of absence beyond sea, the tenant pleads that John has taken the habit of religion in the order of the Hospital of St. John of Jerusalem in England and is still alive, and that Robergia likewise at Buckland, in the county of Somerset and diocese of Bath and Wells, has taken the habit in the same order and is

[1] Willuby *B*, *D*, *Vulg.*; William *A*. [2] livers *Vulg.*; lius *B*, *D*; lux *L*. [3] Hedon *L*, *P*; Herle *A*, *Vulg.* [4] Eaux doivent joindre laverement *B*; Eaux yci de r'[=receivre] laverement *D*; Euz ne deyvent jondre laverement *L*. [5] ou mort *L*; a nous (?) n'est pas a dire ou mort *P*. [6] prove *D*. [7] Ypota, *A*, *P*; Ypeta *B*, *D*, *Vulg.*; Spoca *L*. [8] meer *B*; mere *D*, *L*. [9] la meer degreez *Vulg.* [10] *Ins.* ne *L*. [11] que vouz recordez *L*. [12] vostre *A*. [13] ou *A*. [14] par lettre levesque *B*, *D*, *Vulg.* [15] entrast *L*. [16] le *L*.

Willoughby. Where is he living? For if he be now living, he may be here to-day and forty leagues off to-morrow.

Hedon.[1] It is for them to tender an averment as to where he is living, for by the exception they endeavour to bar us from recovering dower upon his death. Therefore it is for you to say where he is living.

Passeley. The law will presume that he is living rather than that he is dead until the contrary be found, and therefore it is for you to say where he died in order that you may maintain your action.

Willoughby. He died in the town of 'Ypota' in the Grecian sea.

Toudeby. This woman and her husband entered the order of St. John of Jerusalem at such a place in the bishopric of Durham, and were there professed, and we pray judgment if she can have an action.

Willoughby. We pray you to record that we told you that our husband was dead in a certain town, and they said that he was alive, and thereupon they went out to imparl, and now they give an answer which comprises more than one issue: namely, that he is alive, and that he is in a certain religious order, and the one plea should be borne out by an averment and the other by a letter from the bishop. We pray judgment.

Afterwards *Willoughby* said: He[2] entered no order and was not professed.

So let inquiry be made.

Note from the Record (*continued*).

professed therein. This the tenant is ready to aver 'when and where he ought.' Thereupon Robergia replies that she was never professed in the said order: and this she is ready to aver as the court shall award.

The record cited on the opposite page proceeds to say that, as the cognisance of such a cause belongs to the ecclesiastical forum, the Bishop of Bath and Wells is to inquire. Then on a later day, the octave (July 1) of St. John Baptist, comes the bishop's certificate that Robergia took the habit of the order of the said Hospital at Buckland in his diocese, and that she made her profession 'pure, sponte, simpliciter et absolute,' and is professed. Therefore Robert goes without day and Robergia and her pledges to prosecute are in mercy. (*Note continued on back of this page.*)

[1] The MSS. leave it a matter of some uncertainty whether counsel for the demandant or counsel for the tenant speaks, and consequently whether he says in effect 'You must say where he lives,' or 'You must say where he died.'

[2] The record suggests 'she,' not 'he.'

Note from the Record (*continued*).

It may be noted that on May 8, 1305, John de Maundeville obtained royal licence to grant the manor of Marshwood and the hundred of Whitchurch to Robert Fitz Payn and Isabella, his wife, and the heirs of Robert (Calendar of Patent Rolls, 1301–7, p. 340). He is one of the real Sir John Maundevilles whose claims to have written the famous book of travels

11. METHERINGHAM *v.* LUTEREL.[1]

Vocatio ou piert qe si le demaundaunt alegge qe le voché est mort, si le tenaunt die q'il est en vie, a peril qe apent il serra somouns.

Un tenaunt, voucha a garr[auntie]. Le garraunt fut somouns. Pus morust le vouché, et le demaundaunt et le tenaunt veindreint en court, et le demaundaunt[2] fit sa subgestioun a la court qe le vouché fut mort, e pria qe le tenaunt revouchast son heir. Le tenaunt dit q'il fut en vie, et le demaundaunt tendist d'averer q'il fut mort.[3]

Hervi.[4] Si vous faillez[5] de vostre voucher, vous perderez tut.

Et irrotulabatur[6] per *Staunton* sic: 'quia petens dicit quod vocatus mortuus est[7] et petit quod tenens revocet, et tenens dicit quod superstes periculo quod incumbit, ideo etc.'[8]

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 170), r. 141.

Robert Luterel by his attorney offers himself upon the fourth day against William, son and heir of Robert of Metheryngham, touching a plea that he should be here on this day to warrant him a toft and fifteen shillings'worth of rent which Margery, sometime wife of Robert of Metheringham, claims as her right against him. And he [William] did not come and the sheriff was ordered to summon him. And the sheriff has now returned (*mandavit*) that he is dead. And Robert testifies (*testatur*) that William is alive, and at his peril demands a writ to summon him. (*Note continued on opposite page.*)

[1] *Vulg.* p. 6. Text from *A*: compared with *B*, *D*, *L*. [2] tenaunt *A*, *B*, *D*, *Vulg.*; demaundant *L*. [3] *A*, *B*, *D*, and *Vulg.* omit portions of preceding sentence. *L* gives it fully. [4] Herin *Vulg.* [5] failit *A*; faillez *B*, *D*, *L*. [6] irrotulatur *L*. [7] *Om.* est *A*. [8] *Om.* ideo etc. *Vulg.*

Note from the Record (*continued*).

have had to be discussed and dismissed. As to ' Ypota ' or ' Spoca,' we can only suggest Hypata, mod. Hypati, near the Spercheius, but some twenty miles from the sea (' Murray's Handbook of Greece,' col. 575); but we are informed that, if ' Spoca ' be the better form, the *S* may be, as in some other cases, a relic of the Greek εἰς and that Phocaea may be meant.

11. METHERINGHAM *v.* LUTEREL.[1]

A tenant vouches. The sheriff returns that the vouchee is dead. The tenant denies this. The vouchee is summoned at the tenant's peril.

A tenant vouched to warranty. The warrantor was summoned. Then the vouchee died. The demandant and the tenant came into court, and the demandant made suggestion to the court that the vouchee was dead and prayed that the tenant might vouch the vouchee's heir; and the tenant said that the vouchee was alive, and the demandant tendered an averment that he was dead.

Hervey [of Stanton], J. If you fail in your voucher you will lose all.

And the matter was enrolled by Stanton in the following form: ' for that the demandant says that the vouchee is dead and prays that the tenant may revouch, and the tenant at his risk[2] says that the vouchee is alive, therefore etc.'

Note from the Record (*continued*).

And Margery, by her attorney, says that as the sheriff testifies that William is (as in truth he is) dead, Robert ought to answer to her demand. And Robert says that, whatever the sheriff may say about William's death, he is alive, and that he [Robert] at his peril desires to sue against him as one who is alive this day, to wit a month from Easter. Therefore once more the sheriff is ordered to summon him to be here on three weeks from Michaelmas to warrant, etc., and let Robert sue against him with the peril that in this case behoves (' sequatur versus eum cum periculo quod decet in hac parte etc.'). The same day is given to Margery by her attorney in the Bench.

[1] Proper names from the record.
[2] The *periculum quod incumbit* is the peril of losing the land.

12. BRANDON *v.* BRANDON.[1]

Voucher d'un enfaunt qi corps est en nulli garde.

Nota en bref de dower un enfaunt dedenz age fust vouché, qi corps est en nulli garde,[2] et deit estre somouns en tiel[3] counté par cel fait, et demaundé fut de quel age il fust, il dist[4] qe xviij. anz. Et stetit vocacio.

Note from the Record.

De Banco Roll, Easter, 1 Edw. II. (No. 170), r. 157d, Norf.

Agnes, sometime wife of Ralph of Brandon, demands against Henry of Brandon a moiety of seven acres and one rood of land in Brandon. As to a moiety of five acres and a rood, Henry vouches Walter, son and heir of William Bernard, who is within age, about the age of seventeen years, and is seised of his land and outside anyone's wardship, the voucher being under two charters made by William Bernard to Henry. (*Note continued on the opposite page.*)

13. UNDERWOOD *v.* FURNEAUX.[5]

Dower ou piert qe si le gardein vers qy le bref est porté pusse atacher sour moy qe jeo pris le corps le heir qe mariage a ly apent par resoun de la tenaunce, jeo serra mye r[espoundu] sauncz ceo qe jeo rende le heir.

Un homme et sa femme porterent bref de dower devers un gardeyn et demaunderent un mees xij. cotages et xxiiij. acres de terre.

Lauf., pur le gardeyn, dit qu'il ne tenist[6] de la demaunde forsqe taunt, et vous dioms qe vous praistes[7] le corps le fitz et l'eyr E. etc., qi mariage a nous appent etc., et a quel houre qe vous nous rendist[8] le corps nous sumes prest de[9] rendre dower de ceo qu'il teint etc.

Hed.[10] La ou il dit qu'il n'est pas tenaunt enterement[11] etc., ceo ne put il dire, qar eynz cez houres si portames nostre bref de garde ou il respoundit entierement.[12] Jugement en[13] ceo etc.

[1] *Vulg.* p. 6. From *A*: compared with *B*, *D*, *L*. No marginal note in *A*. [2] *Om.* last four words and substitute 'etc.' *B*, *Vulg.* [3] cele *L*. [4] deit *A*; dist *B*, *L*. [5] *Vulg.* p. 6. Text from *A*: compared with *B*, *D*, *L*. [6] *Or* teinst *A*; tyent *B*; tent *L*. [7] preistes *B*, *D*, *L*. [8] rendetz *B*, *D*; rendez *L*. [9] *Ins.* vous *D*. [10] Hod. *A*. [11] outrement *A*. [12] dilent' *B*, *Vulg.* [13] de *B*, *D*.

12. BRANDON *v.* BRANDON.[1]

Voucher of an infant who has no guardian.

Note that in a writ of dower an infant within age was vouched, and his body was not in any one's wardship, and he was to be summoned in the same county under a certain deed. And the question was asked how old he was. He[2] said that he was eighteen years old. The voucher stood.

Note from the Record (*continued*).

Then as to the moiety of the remaining two acres, the tenant, Henry, vouches William, son and heir of Geoffrey Bartholomew, who is within age, about the age of seventeen years, and is seised of his land and outside any one's wardship, the voucher being under a charter made by Geoffrey to Henry. The order is: 'Let him have them here on the said day by aid of the court, and let them be summoned in the same county:' *i.e.* the county in which lie the tenements demanded in the action.

13. UNDERWOOD *v.* FURNEAUX.[3]

In an action for dower against a guardian it is a good plea that the demandant has eloigned the heir. In answer to a plea of partial non tenure it is urged that the tenant answered for the whole in a previous action.

A man and his wife brought a writ of dower against a guardian and demanded a house, twelve cottages, and twenty-four acres of land.

Laufer, for the guardian, said that of the land demanded he only held so much. And (said he) we tell you that you took the body of the son and heir of [Robert], whose marriage belongs to us etc., and when you render his body to us we are ready to render dower of so much as we hold.

Hedon. As to what he says about not being tenant of the whole, that he cannot say, for before now we brought our writ of wardship against him, and he answered for the whole. We pray judgment of this.

[1] Proper names from the record.
[2] Apparently it must have been the tenant's counsel who said this.
[3] Proper names from the record.

Lauf. En bref de garde si poms estre tenant del entiere,[1] partie en demene, partie en servicez, et pur ceo responez si vous estes seisi du corps le heyr auxi com nous avoms dit.

Hed. Nous ne prismes[2] point le heir[3] un Henri Chapleyn ne seisi[4] sumes, prest etc.

Extract from the Record.

De Banco Roll, Easter, 1 Edw. II. (No. 170), r. 157d, Camb.

[Plea.]—Et Robertus [de Furneaus] per attornatum suum venit et dicit quod ipse non tenet de predictis tenementis unde etc. versus eum nisi . . . tantum. Et dicit quod eadem Margeria post mortem predicti Roberti primi viri etc. elongavit quemdam Robertum filium et heredem predicti Roberti cuius custodia et maritagium ad ipsum Robertum de Furneaus pertinet etc., unde dicit quod si predicta Margeria predictum heredem ei restituisse voluisset, paratus fuit reddidisse predicte Margerie predictam dotem suam. Unde petit iudicium.

[Replication.]—Et Thomas et Margeria dicunt quod predictus Robertus de Furneaus tenet integre predicta tenementa, unde etc., et tenuit die impetracionis brevis etc., scilicet xv° die Novembris anno regni Regis Edwardi patris etc. xxxiiij° [A.D. 1306]. Dicunt eciam quod quidam Hugo filius Walteri Michel capellanus avunculus heredis statim post mortem predicti Roberti de Lyntone primi viri etc. racione tenementorum que idem Robertus tenuit in socagium etc. seisivit predictum heredem, et custodiam eius habuit per tres annos etc. quousque Johannes de Northwode, Johannes de Chishulle et alii predictum heredem a custodia ipsius Hugonis vi et armis rapuerunt etc. Unde dicunt quod predicta Margeria non elongavit predictum heredem sicut predictus Robertus asserit. Et hoc petunt quod inquiratur.

[Joinder of issue.]—Et Robertus de Furneaus similiter.

14. ANON.[5]

Amesurement de pasture ou il avoyt la vewe, ou le bref abati par joint feffement.

Un A. porta soun bref de amesurement de pasture vers B. et C.

Will. pur C. Nous demaundoms la veue.

Dev. Ceo est de vostre tort demene, par qey ne devet estre mesconisaunt, et pur ceo la vewe ne devet avoyr.

Ber. De qey demaundez vous la vewe, le quel de vostre fraunctenement ou de soun fraunctenement ou de la pasture?

[1] dilent' *B*, *Vulg.* [2] prioms *A*; prismes *B*, *D*, *Vulg.*; preymes *L.* [3] *Ins.* eynz *L.* [4] *Ins.* ne *D.* [5] Not in *Vulg.* Only found in the part of *A* that we call *A* 2; but apparently attributed there to Pasch. an. 1.

Laufer. In a writ of ward we may be tenant of the whole, part in demesne, part in service. So answer whether you are seised of the heir's body as we have said.

Hedon. We did not take the body of the heir,[1] nor are we seised of it. Ready etc.

Note from the Record.

Thomas Underwode and Margery his wife demand against Robert de Furneaus a third part of three messuages, of twenty-four acres of land, and of certain other tenements in Great Linton and 'Bergham' (Barham) in Cambridgeshire as the dower of which Margery was endowed by her first husband, Robert of Linton. The tenant, Robert de Furneaus, pleads (1) that he only holds a specified portion of these tenements, and (2) that Margery after the death of her first husband made off with ('elongavit') Robert that husband's son and heir, whose marriage belonged to Furneaus, and that if Margery would have restored the heir to Furneaus, then Furneaus would have rendered her dower to her. The reply of the demandants is to the effect (1) that Furneaus holds the whole, and (2) that the demandant Margery did not take the heir's body, but that it was seized by an uncle, Hugh the chaplain, as guardian in socage, and that after he had held it for three years it was ravished from him by John of Northwode, John of Chishulle, and others (*see the opposite page*). Issue is joined and a jury is to come on the octave of Trinity. The attempt of the demandants' counsel to cut off the tenant from his plea of partial non-tenure by the allegation that in an action of a different kind he has answered as full tenant leaves no mark on the record.

14. ANON.

Admeasurement of pasture. View allowed. A plea of joint tenure with a wife not named in the writ is upheld.

One A. brought a writ of admeasurement of pasture against B. and C.

Willoughby for C. We demand a view.

Devom. We sue on your own tort, about which you can make no mistake, and therefore you ought not to have a view.

Bereford, J. Of what do you demand a view? Of your freehold, or of his freehold, or of the pasture?

[1] Most of the MSS. say 'of Henry Chaplain.' The record suggests that instead we should read 'but one Hugh the chaplain took it.'

Will. Nous demaundoms la vewe de la pasture e del fraunctenement a qy la commune est apendaunt.

Der. De vostre tort demene ne devetz estre mesconisaunt, ne de vostre fraunctenement ne devet la vewe aver, ne de vostre tenaunce ne devet estre mesconisaunt.

Et conceditur ultimo.

Will. pur C. Nous vous dioms q'il n'ad rien en lez tenemenz si noun joint oed un S. sa femme, e veetz cy fait qe ceo testmoigne. Jugement du bref.

Dev. Par taunt n'abaterez nostre bref, qar nous ne bioms qe a oster un surcharge qe vous de vostre tort demene avez fait. Et d'altrepart il ad nulle fraunctenement en demaunde, pur qey vous n'estes pas en cas de statut de abatre moun bref par joint feffement, qar si nous vousisoms traverser et dire q'il fust soul tenaunt jour du bref purchasé, nous ne serroms mye receu. Jugement, si par tiel excepcioun pusset nostre bref abatre.

Will. Si l'amesurement fust fait, ceo tranchereit a touz jours et issi terminé [1] en le dreit, et issi nostre fraunctenement mesuré la ou el n'est mye party. Et demaundoms jugement de puis qe nostre femme est joint en touz les terres dount il bye oster la surcharge, et el n'est nomé en le bref, si nous devoms respoundre.

Scout.[2] Il vous dit veirs. Il n'est pas en cas de statut, mès il est en cas semblable, et de puis qe la chartre q'il mette veot q'el [3] est joint en touz les terres q'il ad en meme la vile il semble q'il covent prendre altre bref.

Et peciit licenciam et habuit.[4]

[1] What part of the verb this 'termine' is may be doubtful. [2] Doubtful *A* 2. [3] *Or* qil *A* 2 [4] MS. *P* here introduces a short note. Debt is brought and a deed produced. It is objected that the plaintiff has already recovered in the court of such an one (*un tel*). But since the deed is whole and uncancelled (*enter en soi et nent dampné*) and no acquittance is produced, the plaintiff has judgment, notwithstanding a recovery in a court that was not of record.

Willoughby. We demand a view of the pasture and of the freehold to which the common is appendant.

Devom. You can make no mistake about your own tort, nor ought you to have a view of your own freehold, for you cannot be mistaken about your own tenancy.

In the end [the view] was granted.

Willoughby for C. We tell you that he [the tenant] has nothing in the tenements save jointly with one S. his wife. See here a deed which witnesses that. Judgment of the writ.

Devom. For all that you shall not abate our writ, for we are only striving to get rid of a surcharge [of the common] which you have made by your own tort. Moreover, there is no freehold in demand, so that you are not in the case in which under the Statute[1] you can abate my writ by [alleging] a joint feoffment, for if we wished to traverse and to say that you were sole tenant on the day of writ purchased, we should not be received. Judgment, whether by such an exception you can abate our writ.

Willoughby. If the admeasurement were made, that would be binding for all time: it would terminate the question in the right, and so our freehold would be admeasured where [our wife] was not party to the action. And since our wife is joint with us in all the lands concerning which he is striving to get rid of the surcharge, and she is not named in the writ, we demand judgment whether we ought to answer.

Scotre.[2] He tells you what is true. He is not in the case mentioned by the Statute; but he is in a similar case, and since the charter which he produces shows that [his wife] is joint with him in all the lands that he has in this vill, it seems that [the plaintiff] must obtain another writ.

He sought licence [so to do] and had it.

[1] Apparently the statute *de coniunctim feoffatis*, 34 Edw. I., which came into force on Aug. 2, 1305.

[2] The name is doubtful. The remark may come from a judge.

PLACITA DE TERMINO S. TRINITATIS ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI PRIMO.

1A. BLAKET *v.* VACHE.[1]

Replegiari, ou l'avowaunt s'afforcea de oster le pleyntif de comune appendaunte par relès le feffour. Replegiari,[2] ou il avowa pur damage fesaunt. L'autre qe pur damage fesaunt ne put il avower, qe en cel leu ou la prise fut fet [il fut] seisi [de] sa comune appendaunt a son fraunktenement. L'autre dit qe son feffour, qi estat il avoit, relessa tote l'apendaunce q'il avoit, et myst un relees.

Richard de la Ware [3] fut attaché a respoundre a William Blaket de plee pour quai a tort prist ses [4] avers etc.

Herle. Avowa [5] etc. Pur ceo qu'il trova ses [6] bestes en la comune [7] pasture de E. Et vous dioms qe l'avauntdit R. est seignour de ceo lieu ou il ne se deit comuner. Et purceo qu'il trova les averres com damage fesaunt si avowe [8] il etc.

Pass. A tiel avowrie ne deit il avenir, qar nous dioms qe le lieu ou la prise etc. est [9] nostre comune de pasture appendaunt a nostre fraunc tenement en la ville de E. Jugement, si vous pussez en nostre comune [10] avowrie faire.

Toud. Un William [11] fut seisi de ceux tenementz a quei vous clamez vostre comune estre appendaunt, le quel William relessa et quitclama l'enproument de la comune qu'il avoit a nous par ceo fait qe cy est, et desicome par ceo fait le dreit se devesti hors de la persone vostre feffour, qi [12] estat vous avez,[13] et il ne put riens en

[1] *Vulg.* p. 7. From *A* : compared with *B*, *D*, *L*. [2] The second part of this note comes from *L*. [3] Wat' *L*. [4] cez *A*. [5] *Om.* avowa *A*. [6] cez *A*. [7] *Ins.* de *A*, *D*. [8] avowie *A*. [9] en *A* ; si est en *L*. [10] pussez com en vostre severale *L*. [11] *Ins.* vostre frere *L*. [12] qe *A*. [13] *Ins.* et issi l'apendaunce esteynt et vous ne poez estre de meillour condicioun qe vostre feffour qi estat vous avez *L*.

PLEAS OF TRINITY TERM, 1 EDWARD II. (A.D. 1308.)

1A. BLAKET *v.* VACHE.[1]

A person (*A*) having a right of common executes a release of it in favour of the owner of the soil (*M*) and afterwards enfeoffs another person (*B*) of the tenement to which the right was appendant. After, as well as before, the release the feoffor (*A*) and (after the feoffment) the feoffee (*B*) continue to turn out beasts. *Qu.* whether the owner of the soil (*M*) can distrain them as damage feasant, or whether the release is ineffectual against the continuous seisin.

Richard de la Vache was attached to answer William Blaket in a plea wherefore he wrongfully took his beasts.[2]

Herle avowed, for that he found these beasts in the common pasture of E. And we tell you that Richard is lord of this place where [the plaintiff] ought not to common.[3] And because he found the beasts doing damage, he avows the taking.

Passeley. To such an avowry he cannot get, for we say that the place where the taking etc. is our common pasture appendant to our freehold in the town of E. Judgment, if you can make an avowry in our common.[4]

Toudeby. One William[5] was seised of these tenements to which you claim your common to be appendant, and he released and quitclaimed the approvement of the common that he had to us by this deed which is here etc., and whereas by this deed the right devested itself out of the person of your feoffor, whose estate you have [and so the appendancy was extinct and you cannot be in a better condition than your feoffor, whose estate you have],[6] and he

[1] Proper names from the record.

[2] On comparison of the two reports here printed it seems that Passeley, Friskeney, Westcote, and Roston are for the plaintiff; Herle and Toudeby for the defendant and avowant.

[3] According to the record, the avowant said that the place was his several.

[4] Or 'if you can make an avowry as in your several.'

[5] Some MSS. insert 'your brother.' It should be 'your father.'

[6] This clause is not in all MSS.

ceo comune encountre soun fait demesne clamer, ne vous par consequent qe par my ly clamet, jugement, si nostre avowrie ne seit assez bon.

Pass. Quele[1] quiteclaime qe vous mettez avaunt, nous avoms qe[2] fere, mès nous dioms qe nostre feffour si fust seisi de comuner et ses[3] auncestres de temps dount memorie[4] etc. com appendaunt a lour fraunctenement en E., et nous après la quiteclame[5] viij. aunz et plus saunz interrupcioun com appendaunt, et demaundoms jugement si saunt ceo qe vous ne moustrez ou la quitclame prist effecte etc.

Herle. La ou vous dites qe vostre feffour et ses[6] auncestres furent seisiz du temps etc. de comuner com appendaunt saunz interrupcioun, jeo vous assigneray interrupcioun,[7] qe meyntenaunt com la quiteclame fust fait si fut interrupcioun de temps et le dreit de appendaunce[8] esteint par la quiteclame. Et d'autre part la quitclame fut fait en la seisine cely qe fut seignour del soil, et plus ne put[9] avoir.

Ber. Vous ne poetz dedire qe vostre feffour ne relessa, et la quitecleime esteint le dreit en la persone celuy qe la fit. Dount jeo pose qe vous ussez quitclaimé le profit de comuner qe vous devez[10] avoir a hour de noun, vous après mettez[11] vos averez, la facet[12] vous un tort, et la puise jeo faire avowrie. Dount, desicom le dreit est esteint[13] par la quiteclayme, la seisine qe vous avez[14] est foundé[15] sur un tort. Par quei etc.

West. Illy ad divers maners de quitclayme de tenemenz et de comune, qar home qe quitclame dreit de tenemenz a celuy q'ad la possessioun[16] meyntenaunt par la quitclaym lyveré le dreit est esteint en la persone celuy qe l'ad fait et se vest[17] en la persone celuy[18] a qui[19] le fet est fait. Mez la[20] ou un homme quitclaime comune,[21] si covent qe les averes celuy qe quitcleym seyent hors, issint qu'il n'eyt nul seisine. Mez nous vous dioms a[22] la quiteclaime qe vous mettez avaunt qe en[23] la confeccioun[24] de la quitcleym et en la

[1] del *B*, *Vulg.*; qe le *D*; de la *L*. [2] quei *B*. [3] cez *A*. [4] *Ins.* ne curt *B*, *Vulg.* [5] apres le feffment fet de *L*. [6] cez *A*. [7] *Om.* four last words, *B*, *Vulg.* [8] append *B*. [9] puist *B*; pount *L*; poeit *D*. [10] devietz *B*. [11] de prime et puis a houre de noune vous mettez *L*. [12] fete *B*, *L*; facetz *D*. [13] attaint *B*, *Vulg.*; atteint *D*. [14] avietz *B*. [15] foundu *B*, *Vulg.*; fondu *D*. [16] *Ins.* qe *A*, *B*, *D*, *L*. [17] *Om.* se vest *D*. [18] l'ad faite etc. a celui *Vulg.*, *B*. [19] que *A*. [20] *Om.* la *A*, *D*. [21] come *Vulg.* [22] que *B*, *D*, *Vulg.* [23] ou *A*; en *B*, *D*. [24] confessioun *Vulg.*

could claim nothing in this common against his own deed, and you can claim nothing since you claim through him, we pray judgment whether our avowry be not good enough.

Passeley. We have nothing to do with any quitclaim that you put forward; but we tell you that our feoffor was seised of commoning, and so were his ancestors from time whereof memory [does not run] as appendant to their freehold in E., and so were we after the feoffment for eight years and more without interruption. And we pray judgment whether [you can bar us by the quitclaim] unless you show us where the quitclaim took effect.[1]

Herle. Whereas you say that your feoffor and his ancestors were seised from time [immemorial] of commoning as appendant without interruption, I will assign you an interruption, for, so soon as the quitclaim was made, there was an interruption and the right appendant was extinguished by the quitclaim. Moreover, the quitclaim was made in the seisin of one who was lord of the soil, and more than that he cannot have.

Bereford, J. You [the plaintiff] cannot deny that your feoffor released, and the quitclaim extinguished the right in the person of him who made it. I put case that at the hour of prime you quitclaimed [to me] the profit of commoning which you had by right, and that afterwards at the hour of noon you turned in your beasts: you would be doing a wrong, and I should have an avowry. Therefore, since the right is extinguished by the quitclaim, the seisin that you have is founded on a tort. Wherefore etc.

Westcote. There is a difference between a quitclaim of tenements and a quitclaim of common, for if a man makes a quitclaim of tenements to one who has the possession of them, straightway when the quitclaim is delivered the right is extinguished in the person of him who made the quitclaim and vests itself in the person of him to whom the quitclaim is made; but where a man quitclaims common, there [if the quitclaim is to be effectual] it behoves that his beasts be off [the land] so that he has no seisin. And we tell you, in answer to the quitclaim which you put forward, that at the time

[1] The record (see our note on p. 30) would not lead us to believe that there was any talk of prescriptive right or of immemorial seisin. Seisin for thirty years before the feoffment was alleged.

lyveré de seisine si fumes[1] nous seisi de la comune. Et de puis qe nous tendoms d'averir la continuaunce de nostre seisine del apendaunce du temps dount etc. nient interrupté,[2] demaundoms jugement si a nul quitclaim, a quel nous ne poums estre partie a conustre le ne[3] dedire, ayms[4] mestre a respoundre.

Hervi. Veez cy,[5] vous poetz traverser[6] l'apendaunce,[7] et mettez la quitcleim en evidence.

Herle. Nous voloms bien.

Toud. Puis la quitcleim[8] unques seisi com appendaunt.

Pass. ne voleit conustre,[9] mes teint a l'apendaunce[10] nient interrupté etc.[11]

1B. BLAKET *v.* VACHE.[12]

Johan Blake porta un replegiari vers Robert de la Roche.

Toud. avowa en meme le lieu etc. pur damage etc.

Herle. Nostre comune apurtenaunt a nostre fraunc tenement en meme la vile, prest etc.

Toud. Ceo ne poez vous dire, qe vous estes estraunge purchaceour de vostre pere, et il relessa en nostre seisine. Jugement etc.

Frisk. Jeo ne fu pas party al fait, mès jeo voile averer ma possessioun et ceuz qe ount[13] eu cele terre du temps etc. sauncz interupcioun com apendaunt.

Herle. Si vostre feffour ust comuné x. aunz après cele fait ceo ne ly dorreit pas title, ergo ne a vous.

Rust. Nous e touz le terres tenauns seisi con apendaunt *ut supra.*

Toud. La quitcleme fet en la seisine le tenaunt le fit disapendaunt. Jugement si par nulle continuance de seisine la pussez faire apurtenaunt.

Spig. Est ceo un a relesser terre demeine[14] et dreit de comune (*quasi diceret non*) ?

Pass. Dure sereyt si nous ne puroms averer la continuaunce, qar

[1] sumus *Vulg.* [2] interruption *Vulg.* [3] le ou a *B, D, Vulg.* [4] eioms *B, D, L.* [5] si *B, D, L.* [6] traversez *A.* [7] lappendant *B.* [8] la quiteclemaunce *D.* [9] *Ins.* le fet *L.* [10] lapendaunt *A*; append' *B.* [11] l'apendaunce saunz interrupcion etc. *L.* [12] Not in *Vulg.* This second report is from the part of *A* that we call *A* 2, where it is very badly written. [13] Doubtful *A* 2. [14] Very obscure in MS.

when it was made and at the livery of seisin we were seised of the common. And since we tender an averment of the continuance of our seisin of this right as appendant from time etc. without interruption, we pray judgment whether we need answer to any quitclaim to which we are not a party and which we cannot confess or deny.

Stanton, J. Look you! You [the defendant] might traverse the appendancy and put the quitclaim in evidence.

Herle. We will do that willingly.

Toudeby. Never seised as appendant since the quitclaim.

Passeley would not confess [the quitclaim], but held to appendancy without interruption.

1b. BLAKET *v.* VACHE.[1]

John Blake brought a replevin against Robert de la Roche.

Toudeby avowed in the said place etc. for damage etc.

Counsel for Plaintiff.[2] Our common appurtenant to our freehold in the same vill. Ready etc.

Toudeby. That you cannot say, for you are stranger and purchaser [by feoffment] from your father, and he released to us in our seisin. Judgment etc.

Friskeney. I was no party to the deed, and I will aver my possession in the person of those who from time whereof etc. without interruption etc. have had this [right of common] as appendant.

Herle. If your feoffor had commoned for ten years after this deed, that would give him no title, and therefore can give you none.

Roston. We and all the tenants of the land were seised [of this right of common] as appendant, as aforesaid.

Toudeby. The quitclaim made in the seisin of the tenant [of the soil] makes [the right] disappendant. Judgment, whether by any contiuuance of seisin you can [once more] make it appurtenant.

Spigurnel, J. Is it all one to release land in demesne and to release a right of common? (He implied that it is not.)[3]

Passeley. It would be hard if we could not aver the continuance

[1] Despite some patent differences, this looks like another report of the last case. The point discussed seems to be the same, though the present report is obscure and is transmitted to us by a clerk who was capable of bad mistakes.

[2] In the MS. this is attributed to Herle; but he seems to have been on the other side.

[3] See the remark attributed to Westcote in the previous case. Spigurnel was a judge of B. R., but may have been sitting in C. B.

si nous fussoms enpledez, nous purioms vocher et recoverer a la valu.

Ber. Comune ne court pas en estente.

Pass. Mès pur la comune la terre sera plus haut estendu, e s'il porte le *quo iure*, jeo pura vocher moun feffour ou alleger prescripcioun etc. Et de puis qe nous aleggoms seisine sauncz interupcioun, jugement.

Ber. Si vostre feffour ly fit l'aquitaunce devaunt manger et par taunt defet l'apendaunce, et[1] après manger il mist ces bestuz[2] etc., quel estat vous poet il de tiel tort faire, car il vous dit qe ceo n'est pas umqore v. aunz?

Rostoun. Nous sumes estraunge al fait et la ne pooms comune demaunder,[3] et tendoms d'averer la continuance la quel il refusent etc.

Extracts from the Record.

De Banco Roll, Trinity, 1 Edw. II. (No. 171), r. 1d, Buck.

[Replication by avowant.]—Et Ricardus dicit quod tenementa que predictus Willelmus tenet in predicta villa habuit idem Willelmus de dono et feoffamento cuiusdam Willelmi Blaket senioris, patris sui, et quod idem Willelmus Blaket senior, diu antequam predictum Willelmum Blaket de predictis tenementis feoffaverat, remisit et omnimodo quietumclamaverat de se et heredibus suis cuidam Ricardo de la Vache, patri predicti Ricardi, et heredibus suis, totum ius et clamium quod habuit in communi pastura in loco predicto. Et profert quoddam scriptum sub nomine ipsius Willelmi Blaket patris etc. quod hoc testatur etc. Et ex quo per predictam quietamclamationem predictus Willelmus perquisitor etc. melioris condicionis in hoc casu esse non potest quoad predictam communam clamandam tanquam pertinentem ad predicta tenementa quam predictus Willelmus feoffator etc. habuit tempore quo ipsum de predictis tenementis feoffavit etc. unde[4] petit iudicium.

[Rejoinder by plaintiff.]—Et predictus Willelmus Blaket iunior etc. quesitus si aliquid voluit ad predictam quietamclamationem respondere, dicit quod non, nec habet necesse etc. Set dicit quod predictus Willelmus pater etc. per triginta annos ante feoffamentum ei factum de predictis tenementis fuit seisitus de predicta communa tanquam pertinente ad predicta tenementa, et similiter idem Willelmus iunior etc. post feoffamentum illud continuavit seisinam suam de eadem communa tanquam pertinente etc. circa[5] octo annos sine interrupcione etc. Et hoc paratus est verificare etc., et petit iudicium.

[Adjournment.]—Dies datus est eis hic in crastino Animarum, salvis partibus hinc inde racionibus suis.

[1] *Om.* et *A* 2. [2] This scribe is fond of these terminations in -uz or -us. [3] The writing is bad and much contracted. Probably we should read 'et ne pooms conustre ne dedire.' [4] unde *seems out of place.* [5] citra *Roll.*

of seisin, for if we were impleaded we might vouch and recover the value [of the right of common from the warrantor].

Bereford, J. No, a right of common cannot be valued in an extent.[1]

Passeley. But by reason of the common the land [to which it is appendant] will be extended more highly; and if he brought the *quo iure* I could vouch my feoffor or allege prescription etc.[2] And, since we allege seisin without interruption, we pray judgment.

Bereford, J. If your feoffor made the release to him before dinner and thereby defeated the appendancy, and then after dinner put in his beasts, what estate could he give to you by virtue of such a tort? For he tells you that this was not five years ago.

Roston. We are strangers to the deed and cannot confess or deny it,[3] and we tender an averment of continuous seisin, and they refuse to accept it.

Note from the Record.

Richard de la Vache is summoned to answer William Blaket the younger in a plea as to why Richard took William's beasts and detained them against gage and pledge. The wrong was done on the Monday before Michaelmas 1307 at Chalfont St. Giles, in a place called the 'Rouwode;' thirty pigs were taken; damages are laid at 20*l.* Richard avows the taking, for that the place in question is his several and he took the pigs damage feasant. William pleads that in the said place he is seised of common of pasture for all manner of beasts at all times of the year as pertaining to a messuage and carucate of land which he holds in the same vill. Richard replies (*see the opposite page*) that the tenements which William holds he holds by the feoffment of his (William's) father, who long before the feoffment had quitclaimed to Richard's father all right in the common pasture. The deed is produced, and the replication argues that the feoffee can be in no better estate than that of his feoffor. Thereupon the plaintiff, William, is asked whether he has anything to say to the quitclaim. He says that he need not make answer to the quitclaim; and he then rejoins that, before the feoffment made to him, his father was seised of the common for thirty years, and that after the feoffment he for about eight years continued the seisin without interruption. A day (3 Nov.) is given to the parties, their rights under the pleadings being reserved to them. In spite of what is said or suggested in the reports, the plaintiff's pleadings on the record say nothing of prescription or time immemorial.

[1] Literally, 'common does not run in extent.'

[2] The *quo iure* is a negatory action given to the owner of the soil against the would-be commoner.

[3] Guesswork. See the French text.

2. KNYVETON *v.* NEWBOTH (ABBOT OF).[1]

Quare impedit, ou piert qe d'avowesoun purchasé par la femme en la persone la femme drein presentement abate le bref, tut fut el covert de baroun.

Quare impedit pur une femme, ou un Nichol fuit seisi et lui enfeffa del manoir etc., et ele seisi [et] presenta etc. Ou le defforceour dit qe un predecessour presenta dreinte etc. Ou ele dit qe ceo ne lui deveroit grever, pur ceo qe a cel temps ele fut covert de baroun. Ou ele demaunda estre eidé par statut etc.

Un Johane[2] porta bref de *quare impedit* vers l'Abbé de N., qe atort lui destourbe etc.

Herle. La ou il dient qe a eux append a presenter purceo qe Nicholas qe enfeffa Johane[3] fust seisi du manier a que etc. et presenta etc., par qi[4] mort etc., la dioms nous qe un William nostre predecessour presenta[5] la dreyn persone par qi[6] mort la eglise est ore voide, et demaundoms jugement du bref.

Pass. Cel presentement ne nous deit grever,[7] qar a cel temps si fumes covert de baroun et denz age, jugement.

Herle. Vous ne estes mye eydé par la comune ley ne par[8] ley especial, qar ley veot qe le heyr eyt mesme le accioun qe l'ancestre avoit[9] auxint des heritages des femelles[10] taunt com ele sount covertetz[11] de barouns, et desicomme l'estat qe vous avetz[12] si est par purchace, jugement.

Staunton̄e.[13] La cause de estatut fut pur durès ouster qe fut[14] a la comune ley en presentement[15] taunt com les heyres furent dedenz age et femmes covert[16] de barouns, qe ne avoint autre recoverir si noun par bref de dreit, et pur ceste duresse[17] fut purveu statut. Et mesme la cause[18] est icy[19] et par consequent mesme la ley. Quia ubi[20] est eadem racio ibi[21] est idem ius.

Toud. Il covient que ele eust[22] heritage par statut[23] par paroulles expresse.[24]

[1] *Vulg.* p. 7. Text from *A*: compared with *B*, *D*, *L*. [2] Johan *D*, *L*; Jone *B*. [3] Johan *A*; Jone *B*; Johanne *D*. [4] qe *A*. [5] presentera *A*. [6] qe *A*. [7] nuyre *L*. [8] *Ins.* la *B*, *D*, *L*. [9] avereyt *L*. [10] des heres females *B*, *Vulg.* [11] covertez *B*, *D*; desout vergez *L*. [12] avietz *B*. [13] Scot *L*. [14] quist *Vulg.* [15] presentementz *D*. [16] covertes *B*, *D*. [17] *Ins.* et *A*; si *B*, *D*. [18] comune *Vulg.* [19] issi icy *A*. [20] ibi *A*. [21] ubi *L*. [22] fust *A*. [23] qar statut dit *Vulg.*, *B*, *D*, *L*. [24] expresses *D*.

2. KNYVETON *v.* NEWBOTH (ABBOT OF).[1]

An advowson is conveyed to husband and wife and their heirs. While the wife is still an infant the church falls vacant and a stranger presents. The husband dies. At the next vacancy the widow brings a possessory action against the stranger. *Held* that she cannot recover, for she is not within Stat. Westm. II. c. 5, which is applicable to cases in which the infant or married woman has come to the advowson by inheritance.[2]

One Joan [widow of John of Knyveton] brought a writ of *quare impedit* against the Abbot of Newboth saying that wrongfully did he disturb her etc.

Herle. Whereas they say that it belongs to them to present because Nicholas, who enfeoffed Joan, was seised of the manor to which [the advowson is appurtenant] and presented [the parson] upon whose death [the church is vacant], we say that one William our predecessor presented the last parson, by whose death the church is now vacant, and we pray judgment of the writ.

Passeley. That presentment should not hurt us, for at that time we were covert by a husband and within age. Judgment.

Herle. You are not aided by the common law nor by the special law, for the law wills that the heir have the same action that the ancestor would have had, and so also in the case of inheritance by females so long as they are covert; and whereas the estate that you have came to you by purchase, we pray judgment.

Scotre.[3] The Statute[4] was passed to remove the hardship that there was in the common law in case a presentation was made while heirs were under age or women were covert, who had no recovery save by writ of right. It was because of this hardship that the Statute was made. And the cause [of grievance] is the same here, and consequently the law is the same, *quia ubi est eadem racio ibi est idem ius.*

Toudeby. By the express words of the Statute it is necessary that she should have had an inheritance [if the Statute is to help her].

[1] Proper names from the record.

[2] This case is Fitz., *Quare impedit*, 43, and is treated as an authority by Coke, Sec. Inst. 360.

[3] Some MSS. ascribe this remark to Stanton, who, however, gives judgment the other way.

[4] Stat. 13 Edw. I. (Westm. II.) c. 5: after giving a possessory remedy where the tenant of the advowson was an infant at the time of the usurpation, it adds, 'Hoc idem observetur de praesentationibus factis ad ecclesias de hereditate uxorum.'

Ber. A quel ley voletz vous tenir ?

Fris. Seit ceo statut, seit ceo comune ley, tiel est la duresse,[1] et nous demorroms en vos discreciouns.

Stauntone. Purceo qe[2] trové est par vostre conisaunce[3] qe l'Abbé presenta derein, mez vous dites qe ceo ne vous deit grever etc. *ut supra*, et statut ne vous eide mye, purceo qe[4] ceo n'est mye vostre heritage, einz est vostre purchace, et statut ne parle mye de purchace, par qei agarde la court[5] etc.

Extracts from the Record.

De Banco Roll, Trinity, 1 Edw. II. (No. 171), r. 82d, Not.

[Conclusion of the plaintiff's replication.]—. . . unde cum per statutum domini Edwardi Regis patris domini Regis nunc ultimo editum apud Westmonasterium de huiusmodi presentacionibus factis tempore quo mulieres fuerunt sub potestate virorum suorum ipsis mulieribus post mortem eorundem ita preiudiciales esse non debent quin per breve possessorium eis subveniatur, petit iudicium si presentacio predicti Abbatis tempore viri sui facta ipsi Johanne actionis sue debeat esse preclusiva.

[Rejoinder.]—Et Abbas dicit quod predictum statutum pro predicta Johanna in casu proposito nichil operatur, quia dicit quod in statuto illo continetur quod cum presentaciones facte fuerint ad ecclesias ' de hereditate uxorum tempore quo fuerunt sub potestate virorum suorum '[6] eis per statutum illud subveniatur, set ex quo predicta Johanna in narracione sua asserit se simul cum predicto Johanne viro suo advocacionem ecclesie predicte perquisivisse, per quod subsequitur quod eadem Johanna non est inde inheredata, et eciam per hoc secundum legem communem nullatenus est ei subveniendum in hac parte, petit iudicium etc.

[Judgment.]—Et Johanna non potest hoc dedicere. Ideo predictus Abbas inde sine die et predicta Johanna nichil capiat per breve suum, set sit in misericordia pro falso clamore.

3. PASTREL *v.* AMORY.[7]

Une feme porta un bref d'entré causa matrimonii prelocuti. Le tenaunt dist q'ele lessa les tenements a un home a tenir pur sa vie pur une autre cause, scil. pur une somme d'argent q'il paya, et qe après ceo ele relessa tut soun dreit a l'avauntdit home. Et le tenaunt mist

[1] diversitie *B*, *Vulg.* [2] qi *A*. [3] coniseins conisauntz *A*. [4] qeus (?) *A*. [5] *Ins.* qe vous ne *L*. [6] We mark by inverted commas a quotation from the Statute. [7] *Vulg.* p. 8. Text from *A* : compared with *B*, *D*, *L*.

Bereford, J. On what law do you rely?

Friskeney. Be it Statute or be it common law, the hardship is there, and we will abide your judgment.

Stanton, J. For that it is found by your confession that the Abbot made the last presentation, and you say that, for the reason given above, this ought not to hurt you, and the Statute does not help you because this is not your heritage but is your purchase, and the Statute says nothing of purchase, therefore the Court awards etc.

Note from the Record.

The Abbot of 'Neubo' (Newboth in Lincolnshire) is summoned to answer Joan wife that was of John of Knyveton. She counts that Nicholas of Knyveton was seised of the manor of Knyveton, to which the advowson pertains, and in the reign of Henry III. presented one Peter of Upton, by whose death the church is now vacant; and that the manor with the advowson descended from Nicholas to one John, who gave it to her husband and her and their heirs; and that of this manor she is seised; and that the Abbot impedes her from presenting. The Abbot pleads that it belongs to him to present, for in the reign of Edw. I. one William his predecessor presented William Hotot, upon whose death (and not upon that of the said Peter) the church is now vacant. In her replication Joan admits this presentation by the Abbot, but says that it ought not to hurt her, for at that time she was under age and under the power of John her late husband; and she pleads the Statute of Westminster the Second (c. 5). The Abbot rejoins (*see the opposite page*) with what is in effect an argument derived from the occurrence of the word *hereditate* in the Statute. Then we read that Joan cannot deny this, and so the Abbot is to go without day and Joan is to take nothing. The Abbot has a writ to the Archbishop of York and is to recover his damages. Subsequently an inquest states that the church is worth 20*l.* a year and fell vacant on the Monday next after St. Hilary. So the Abbot recovers 10*l.* under the Statute, since the six months have not run.[1]

3. PASTREL *v.* AMORY.[2]

It appears by a deed executed by a woman that she demised tenements to a man for his life for a sum of money paid down and a yearly rent. *Qu.* whether she can aver that this man had entry into the tenements by reason of a marriage proposed between them, and so can bring a writ of entry *causa matrimonii prelocuti* against his assign. The tenant in such an action desires to rely, not only on the said

[1] As to the damages, see Coke, Sec. Inst. 362–3.
[2] Proper names from the record.

avaunt deus fets qe ceo tesmoignerent. La feme tendi d'averer l'entré causa matrimonii prelocuti.[1]

Une Muriele porta bref d'entré vers un Thomas etc., en les queux il n'ad entré sy noun par Johan a qi ele lessa par cause de matrimoni avaunt parlé.

Pass. Verité[2] est qe lez tenemenz furent en la seisine une Muriele qe dona a Johan et a ses[3] assignés[4] a tenir tut la vie Muriele, rendaunt a luy ij marcas par an, et au chief seignour[5] etc., et par cest escrit. Jugement, depuis que soun fait demesne prove lez tenemenz estre donetz par aultre cause, si ele pusse accioun avoir. Et pour plus affermir nostre estat, Muriel relessa et quitclama tut soun dreit.

West. A quel del deux volez vous tenir ?[6]

Pass. Nous mettoms avaunt le fait[7] pur traversir la cause, qar la ou vous dites qe nous n'avoms[8] entré sy noun par cause de matrimoni, vostre[9] fait prove le reverse, et la quittclaime est un[10] evidence pur affermer nostre estat.

Wilbi. Il covent qe vous tenetz al un, qar chescun de eaux purra prendre[11] diverse issue.

Pass. Si jeo usasse[12] soulment l'escrit, si supposerey[13] jeo un reversioun,[14] par quai il covent qe jeo me eyde del un pur affermir le reverse de la cause del bref[15] et del autre pur affermer moun estat.

West. Quel fait q'il mettent avaunt, qe les tenemenz furent donetz com nous avoms dit, prest etc.

Pass. Est ceo vostre fait ou noun ?

West. La ou tenemenz sount donetz par tiel cause ne serra mys en l'escrit quia donum est condicionale, dount si jeo ne sey respoundu d'averer la[16] cause encountre la chartre ou[17] l'escrit, issint ensuereyt qe tenemenz donez par tel[18] cause ne serreynt jammès estabelés.[19]

Berr. Conusez le fait, et puis seez[20] a vos chalanges.

West. Ceo serreit aultre voie de pleder.

Et sic pendet.[21]

[1] This note is the editor's. In *A* stands merely 'Entre causa matrimonii prelocuti.' [2] Vers *B*, *Vulg.* [3] cez *A*. [4] conpaignouns *A* ; assignes *Vulg.*, *B* ; assignez *L* ; assignetz *D*. [5] seignurage *L*. [6] voilletz prendre *B*, *Vulg.* ; *sim. D*. [7] lescrit *L*. [8] avoms *A*. [9] nostre *Vulg*. [10] en *L*. [11] de eux prent *B*, *Vulg*. [12] usas *A*. [13] supposereyt *A*. [14] reverson *A*. [15] de vostre entre *L*. [16] *Om. all that follows the previous* tiel, *A*, *B*, *Vulg.*, *D*. *Supplied from L*. [17] en *A*. [18] cele *B*. [19] establis *L* ; estables *B*, *D*. [20] soit *Vulg*. [21] *Add* placitum *B*, *Vulg*.

demise, but on a later release in fee simple executed by the woman. Can he do this, and if so how ?[1]

One Muriel brought a writ of entry against one Gilbert, saying 'into which he had no entry, save through (*per*) Thomas, to whom (*cui*) she demised *causa matrimonii prelocuti*.'

Passeley. True it is that the tenements were in the seisin of one Muriel, who gave them to one Thomas and his assigns to hold for the life of Muriel,[2] rendering to her two marks yearly, and to the chief lord [the accustomed services], and that was done by this writing. Judgment, whether she can have an action, since her own deed proves that the tenements were given for a cause other [than that mentioned in her writ]. And, further to affirm our estate, Muriel released and quitclaimed her right.

Westcote. By which of these two [allegations] will you abide ?

Passeley. We put forward the deed to traverse the cause [of the gift]; for whereas you say that we have no entry save *causa matrimonii prelocuti*, your deed proves the contrary; and then the quitclaim is evidence to affirm our estate.

Willoughby. You must hold to one of the two, for each may take a different issue.

Passeley. If I only used the writing [and not the release], I should suppose [the existence] of a reversion [in Muriel]. So it behoves me to aid myself by [the writing] to disprove the cause of the demise as stated in the writ, and then it behoves me to affirm my estate by [the release].

Westcote. Whatever deeds they may put forward, we are ready [to aver] that the tenements were given as we have said.

Passeley. Your deed or not your deed ?

Westcote. Where the tenements are given for such a cause as aforesaid one would not say in the writing 'This gift is conditional;' so, if I be not admitted to aver the cause against the charter and writing, it would follow that gifts of tenements for such a cause would never be established.

Bereford, J. Confess the deed and then betake yourself to your objections.

Westcote. That would be another way of pleading.

So the cause pends.

[1] The summary in Maynard's Table (under *Causa matrimonii*) says: 'A woman by deed gives for life at a rent: can she have a *Causa matrimonii prelocuti* ?' This rather rare writ of entry has its origin in what we might call a 'failure of consideration.'

[2] Not so, according to the record, but for the life of the lessee.

Note from the Record.

De Banco Roll, Trinity, 1 Edw. II. (No. 171), m. 170d, Som.

Muriella Pastrel demands against Gilbert, son of Gilbert Ammory, certain tenements in High Littleton ['Heghelittletone'] as her right and as those into which Gilbert has no entry except through (*per*) Thomas Glade, to whom (*cui*) Muriel demised them by reason of a marriage proposed between them, in such wise that he was to have married her and has not yet done so (causa matrimonii inter eos prelocuti quo eam duxisse debuit in uxorem et nondum duxit etc.).

Gilbert confesses that Muriel demised to Thomas, but not by reason of a marriage proposed between them, for it was in accordance with a certain writing, which Gilbert produces in court, and which witnesses that Muriel granted and demised to Thomas for (*pro*) a certain sum of money which she received, *tenendum* to Thomas and his assigns for his whole life, of Muriel and her heirs, *reddendo* to her two marks a year by half-yearly payments, and doing suit to the court of Backwell and to the sheriff's turn at 'Thyckethorne' so often as such suit should be due from the tenements:— clause of warranty. And Gilbert further says that Muriel afterwards remised and quitclaimed to Thomas and his heirs all right and claim that she had in the tenements, *tenendum* to Thomas and his heirs, of the chief lords. (*Note continued on the opposite page.*)

4. EURE *v.* MEYNILL.[1]

Annuité, ou piert qe jeo purra user tiel bref tut eyt il clause de destresse en le fait, et si le defendaunt alege enprisounement il covient dire en la garde cely a qy le fait se fist.[2]

Annuitie par escript qe voleit qe au quel houre qe l'annuitie fuist arrere lirreit destreindre etc.: ou le bref fuist chalengé pur ceo q'yl y avoit clause de destresce et le bref agardé bon etc.

Un Johan[3] de E.[4] porta bref de annuyté vers Nichol de Nevil et demaunda x. li. qe arere ly furent de un annuele rente de v. li. par an, e mist avaunt fait.

Herle. Jugement du bref, qar vostre demostraunce voet qe vous avez[5] recoverir par voye de destresse. Jugement, si par tiel bref pussez riens demaunder, depus qe vostre especiauté defet[6] vostre purchace.

Malm. Est ceo vostre fait ou noun?

Herle. Jeo n'ai mestier a conustre ou dedire.

[1] *Vulg.* p. 8. Text from *A*; compared with *B*, *D*, *L*. [2] But the case seems to show the contrary. [3] Johane *A*. [4] Eure *L*. [5] eietz *B*, *D*; eyez *L*. [6] de fait *Vulg.*; defait *B*, *D*.

Note from the Record (*continued.*)

After the statement of the lease and release, Gilbert's plea continues thus:—And for that by the said writing of demise it appears that the said tenements were demised for the said cause (*occasione predicta*), to wit, for the said two marks a year to be paid etc., and not by reason of a marriage etc., he [Gilbert] demands judgment whether the said Muriel is to be answered to her nude parole (*simplicem vocem suam*) against the tenor of the said deed etc., or ought in this behalf to be admitted to any averment by the country to inquire touching the cause aforesaid.

And Muriel fully confesses the said writing of demise for the lifetime of the said Thomas etc.; but she says that the said cause of matrimony could not and ought not to be inserted in the said writing ('predicta causa matrimonii etc. non potuit nec debuit inseri in predicto scripto'). Wherefore she says that, notwithstanding this, an action is reserved to her, since she is ready to aver by the country her action and the cause aforesaid. And she demands judgment.

[Adjournment.]—A day is given them to hear their judgment here on the octave of St. Martin.

4. EURE *v.* MEYNILL.[1]

An action of annuity will lie for the arrears of a rent-charge, notwithstanding the power of distress. In an action on a deed the defendant is admitted to plead that at the time of the making of the deed he was in prison, without saying that the imprisonment was at the plaintiff's suit.

One John de Eure brought his writ of annuity against Nicholas de Meynill, and demanded 10*l.* which were arrear of an annual rent of 5*l.*, and put forward a deed.

Herle. Judgment of the writ, for your declaration shows that you have a recovery by way of distress. Judgment whether by such a writ you can demand anything when the specialty that you have produced defeats the writ that you have purchased.

Malberthorpe. Is it your deed: yes or no?

Herle. I have no need to confess or deny.

[1] Proper names from the record.

Malm. La excepcioun qe vous donetz pur bref abatir [1] si avez hors del especialté, dount il covent adeprimes conustre ou dedire et pus prendre avauntage.

Herle. Nous demorroms en vos agardes, desicome l'especialté qu'il mette avaunt defet soun purchace.[2] Jugement si a cesti bref de annuité deoms [3] respoundre.

Frisk. Si j'ay ij. voies, a moi est a eslire.[4]

Hervi.[5] Nous agardoms le bref bone.

Herle. Jugement de la varriaunce entre la date du fait et del [6] counte. (Et fut agardé a respoundre etc.)

Herle. Le fait ne nous [7] deit nure,[8] qar au temps de la confecioun de ceo fait si fumes enprisoné [9] etc.

Frisk. En qi prisoun etc ? [10] *Herle.* En la prisoun le Roi.

Hervi.[11] A qi siust [12] et en quei [13] garde ?

Herle.[14] En la garde celuy que fust [15] gardeyn de la prisoun nostre seignour le Roy a ceo temps.

Malm. Nous demouroms [16] en vos descrecioums si nous avoms [17] mestier a respoundre a cest enprisounement, desicome il ne dit [18] pas qu'il fut enprisouné en nostre garde ne a nostre suit.

Frisk. Au temps de la confeccioun de cest escrit si ala il a sa volunté hors de prisoune, prest etc.

Note from the Record.

De Banco Roll, Trinity, 1 Edw. II. (No. 171), m. 65d, York.

Nicholas de Meynill' was summoned to answer John de Eure in a plea touching a sum of 6*l.* arrear of an annuity (de annuo redditu) of 6*l.* The count states that on Thursday the feast of St. Hilary (13 Jan.) 1305 Nicholas bound himself and his heirs to John in an annual rent of 6*l.* for the life of John from the manor of Semer, into whosesoever hands it should come. Then *profert* is made of a deed which contains a power of distress : to wit, that if the said rent shall be in arrear in whole or in part, John may distrain for it in the said manor, into whosesoever hands it may come, and retain the distress until full satisfaction is made.

[Plea in abatement of the writ.]—Nicholas says that John exacts the said arrears of the rent due to him, and to affirm his action puts forward a writing in which it is said that if the rent be in arrear it shall be lawful for John to distrain, and so a special remedy and recovery are competent to John by way of distress in the manor so charged as aforesaid, and not by this writ of annuity. (*Note continued on the opposite page.*)

[1] abatre *B, D.* [2] estat *L.* [3] devoms *B, D.* [4] alier *A.* [5] Herin *Vulg.* [6] le *B, C, D.* [7] vous *B, D.* [8] nuyre *L.* [9] en prisone *D.* [10] *Om.* this question *B, Vulg.* [11] Herin *Vulg.* [12] siwite *B* ; sute *D.* [13] qi *D.* [14] Ber. *L.* [15] *Ins.* adonqe *D.* [16] nous demurrons *B* ; *om. A, D* ; Sire a vos discressons *L.* [17] eioms *B, D, L.* [18] dedit *A* ; dit *B, D, Vulg.*

Malberthorpe. The exception that you take for the abatement of the writ you obtain from the specialty, therefore you must first confess or deny and then take advantage.

Herle [to the Justices]. We will abide by your award, since the specialty that he puts forward defeats the writ that he has purchased. Judgment, if we ought to answer to this writ of annuity.

Friskeney. If I have two ways [open to me, namely, distress and action] I have my choice.

STANTON, J. We adjudge the writ good.

Herle. Judgment on the variance between the date in the writ and that in the count. (But it was adjudged that he must answer.)

Herle. The deed ought not to hurt us, for at the time of its making we were in prison.

Friskeney. In whose prison?

Herle. In the King's prison.

STANTON, J. At whose suit and in whose custody?

Herle. In the custody of him who was warden of the King's prison at that time.

Malberthorpe. We submit to your judgment whether we have need to answer to this [allegation of] imprisonment, since he does not say that he was imprisoned in our custody or at our suit.

Friskeney. At the time of the making of this deed he was going at large and not in prison.

Note from the Record (*continued*).

'Afterwards it was said by the Justices to the said Nicholas that he should make other answer (respondeat aliud).' In other words, the plea in abatement is overruled.

[Plea in bar.]—Nicholas says that at the time of the making of the said writing he was imprisoned and detained in the King's prison at York, and this he is ready to aver.

[Reply.]—John denies that Nicholas was imprisoned (defendit quod predictus Nicholaus non fuit imprisonatus) at the time of the making of the said writing; indeed (immo) he was out of prison and *sui iuris*.

Issue joined. A jury is to come on Michaelmas quindene.

It would seem from the report that some attempt was made to take advantage of a variance between the count and the deed in the matter of date. This does not appear upon the record. Also nothing is there said of the necessity of an allegation that the imprisonment was at the plaintiff's suit. We may gather that the plaintiff's counsel abandoned this point.

5. ANON.[1]

Trespas porté vers persone ou il dist qe ceo furent ces dymes severetz de ix. parties etc.

L'Abbé de S. porta soun bref de trespas vers la persone de la Eglise de E., qe certeyn jour etc. ovesqe autres desconus ov force et armes etc., et ses[2] biens et ses[3] chateaux, nomement blees, fenes, forage etc. lens[4] presterent et enporterent etc. et ces heyes debruserent etc.

Pass. pur toux, estre[5] la persoune, de rein coupabil[6] etc. Et la persone de tut, estre les blees, de reyn coupable. Et qaunt a les blees il avowe etc.[7] par la resoun qe le lieu ou il se pleynt etc. est dedenz la purceint de la paroche de W. Et vous[8] dit qe ceaux blees sount ses[9] dymes severés de les ix. parties, et demaundoms jugement desicome[10] il ad nous conu persone si[11] dez dimes qe sount choses espirituales devoms ceinz[12] respoundre.[13] D'aultrepart, nous avoms fait l'avowrie [et] a nous avowé la prise dez dimes[14] severés de ix. parties. Jugement si de chose espirituel pusse cest court avoir conissaunce.[15] Estre ceo, il mesmes nous enplede de mesme la choce en court christiene par ces[16] instrumens.

Staunton. A les[17] instrumens devoms nul fey.[18] Més il vous dit[19] qe vous debrusastes ces heyes et enportastes[20] les blees par[21] aultri[22] voie.

Hunt. Ceo dioms[23] nous pur servir nostre[24] bref.

Hod.[25] Il ount suy la prohibicioun et nous ount defendu qe nous ne suimes[26] plee en court christiene de lour ley chatel. (Et pus traverserent[27] qe ceo fust lour dimes severés de[28] lour ley chatel etc.[29])

[1] *Vulg.* p. 8. Text from *A*: compared with *B*, *D*, *L*. [2] ces *A*. [3] ces *A*. [4] la einz *D*; leyns *L*. [5] forspris *L*. [6] copable *D*; coupable *L*. [7] *Repeat* etc. *A*. [8] puis *B*, *D*, *Vulg*. [9] ces *A*. [10] depuis *B*, *D*, *Vulg*. [11] s'il *A*. [12] ceynz doutymes *A*; devoms ceynz *B*, *D*. [13] conustre *B*, *Vulg*. [14] fait lavowerie e sumes a la privation des dismes *Vulg*., *B*; et sumes al privacion de nos dymes *L*; *sim. D*. [15] Jugement si etc. *Vulg*. [16] ses *A* [17] ces *B*, *Vulg*. [18] *Ins.* doner *B*, *Vulg.*; *om. A*, *D*, *L*. [19] ount dit *L*. [20] emparkastes *D*. [21] qe est *L*. [22] autre *D*. [23] deismes *B*; donoms *D*; deyoms *L*. [24] *Om.* nostre *L*. [25] Hed. *D*. [26] sumes, *A*; sivoms *B*; siwames *L*; suwoms *D*. [27] traversir *A*. [28] nent *L*. [29] *Om.* last sentence *Vulg*. It appears in *B*.

5. ANON.[1]

Trespass against a parson for taking corn. A plea that the corn was the defendant's tithe severed from the nine parts is allowed and traversed.

The Abbot of S. brought his writ of trespass against the parson of the church of E. saying that on a certain day he, with others unknown, with force and arms etc. took and carried away his goods, to wit corn, hay, forage etc. which were there, and broke his hedges.

Passeley, for all except the parson, pleaded not guilty; and for the parson not guilty except as to the corn; and as to the corn, he avowed, for that the place which is mentioned in the complaint is within the precinct of the parish of E. And he tells you that this corn is his tithe severed from the nine parts; and we demand judgment, since [the plaintiff] has confessed us to be parson, whether we ought to answer here concerning the tithes which are spiritual things. And moreover we have avowed[2] for a taking of tithe severed from the nine parts, and we pray judgment whether this Court can take cognizance of a spiritual matter. Besides [the plaintiff] himself is impleading us about the same matter in Court Christian, by these instruments.

Stanton, J. We are not bound to give credit to these instruments, but [the plaintiff] says that you broke his hedges and carried off his corn, and that is another matter.[3]

Huntingdon. We say that to serve our writ.

Hedon.[4] They have sued a prohibition and prohibited us from suing in Court Christian touching their lay chattel.

And afterwards [the plaintiff's counsel] traversed the allegation that this corn was tithe severed from lay chattel.

[1] Record not found.

[2] But the text is not satisfactory.

[3] Accepting the reading *qe est autre voie*.

[4] Apparently an argument for the plaintiff. We were suing in Court Christian about this matter. The defendants obtained a prohibition on the ground that the suit affected lay chattel. Now, when we come here, they say the opposite.

6. ANON.[1]

Conisaunce, ou piert que si jeo puisse atacher le conisour estre[2] ma femme ravi, de quel chose jeo ay bref pendaunt etc., jeo destourbera la conisaunce.

Johan de Reyns[3] et Margerie sa femme vinderent en court par bref de covenaunt, ou J. et M. releserent et quiteclaimerent pur eaux et pur lour heires a toux iours c. li.[4] de rente a un Thomas etc. Surveint etc.[5] un W. et pria qe la conissaunce ne fust mye receu, qar il deit[6] qe M. fust sa femme et est[7] ravi de luy, dount bref de ravissement fust pendaunt entre eaux devaunt Sire Roggier Brabazoun vers lour ravissours, et[8] le ravissement fait par J. qe la reteint[9] unqore ovesqe luy. Par quay fust maundé au Baunk etc., et[10] testmoigné fut qu'il avoit[11] un tiel bref pendaunt. Et par taunt la note nent receu etc.

7. HEMEGRAVE *v.* BERNAKE.[12]

Replegiari, ou piert q'il sour [qi] l'avowrie etc. pria eyde de sa femme qe ele tient les tenementz en dower. Et habuit. Replegiari, ou une femme fuist prié en eide de soun baroun et habuit et le defendant avowa com baillif et.

Un William se pleint qe un Edmund[13] a tort prist ses[14] averes.

Malm. conust[15] etc. par la resoun qe William teint de Johane,[16] qi baillif il est, un fee de chivaler par homage et escuage, dount Johane[17] fut seisi par my la mayn un Henri com par my etc. Et purceo qe vj. s. de releef furent arere etc. a jour de la prise après la mort Henri, si conust il com baillif etc.[18]

Lauuf. Le lieu ou la prise[19] etc. si est del[20] dower nostre femme, sauntz qi[21] nous ne poums ceux tenemenz charger ne descharger, et prioms heyde de luy.

[1] *Vulg.* p. 8. Text from *A*: compared with *B*, *D*, *L*. [2] Doubtful *A*. [3] Rynes *B*; Reynes *D*; Caynis (?) *L*. [4] s. *D*. [5] *Om.* etc. *B*, *D*. [6] dit *B*, *D*. [7] fuist *B*, *Vulg.*; *om. L*. [8] et *L*; *om. A*, *B*, *Vulg.* [9] retient *B*, *D*; retent *L*. [10] ou *L*. [11] qil y avoit *B*, *D*, *Vulg.* [12] *Vulg.* p. 9. Text from *A*: compared with *B*, *D*, *L*. [13] un Esmon *D*; un Jon *B*. [14] ces *A*. [15] avowea *Vulg.*, *B*; avowa *D*; counta *L*. [16] Johan *A*. [17] Johan *A*. [18] *Om.* this sentence *L*. [19] le aprise *A*. [20] le *B*, *Vulg.* [21] quei *A*.

6. ANON.[1]

A man and a woman as husband and wife are levying a fine. An intervener asserts the woman to be his wife ravished from him, and that an action for the ravishment is pending. Fine refused.

John and Margery his wife came into court upon a writ of covenant, and thereupon John and Margery released and quit-claimed for themselves and their heirs for ever 100*l.* of rent to one Thomas etc. One W. thereupon intervened and prayed that the conusance might not be received, for he said that Margery was his wife and is ravished from him and that a writ of ravishment was pending between them before Sir Roger Brabazon [C.J.B.R.] against the ravishers, the ravishment being made by John, who still retains her with him. Wherefore inquiry was made at the [King's] Bench, and it was testified that there was such a writ pending. Therefore the note [of the proposed fine] was not received etc.

7. HEMEGRAVE *v.* BERNAKE.[2]

The husband of a tenant in dower brings replevin. Avowry is made on the heir of the doweress's first husband for a relief in arrear. The husband has aid of his wife; and then they have aid of the heir.

One Edmund of Hemegrave complains that one Stephen wrongfully took his beasts.

Malberthorpe made cognizance[3] for that one Edmund of Pageham held of Joan, whose bailiff [the defendant is], a knight's fee by homage and scutage, whereof Joan was seised by the hand of one William as by [the hand of her very tenant]; and because six shillings for a relief were arrear etc. on the day of the taking after the death of William, therefore he [the defendant] makes cognizance as bailiff etc.

Laufer. The place where the taking etc. is the dower of our wife, without whom we cannot charge or discharge these tenements, and we pray aid of her.

[1] Record not found. Proper names uncertain.

[2] Proper names from the record.

[3] Where the distrainor has been acting as bailiff for another, he does not *avow*; he makes cognizance.

Malm. Heyde de luy ne devetz avoir, qar el est estraunge a nostre avowri.

Stauntone. Seez a un si ceo seyt le dower sa femme ou noun.

Et non potuit dedicere. Et habuit auxilium.

Malm. Nous prioms qe Johane [1] veigne en heyde ovesqe soun baillif.[2]

Stauntone. Il vous covent [3] attendre taunt qe la femme viegne,[4] et pus put [5] il [6] prier heide. (Et secundum quosdam la femme avera heide del heir.[7])

Note from the Record.

De Banco Roll, Trinity, 1 Edw. II. (No. 171), r. 207, Norf.

William Bernake and Stephen Contynge are summoned to answer Edmund de Hemegrave for taking a horse and detaining it against gage and pledge. The wrong was done on (4 Nov. 1307) the Saturday next after All Saints' day, an. reg. 1, at Belaugh.

William denies the taking. Stephen makes cognizance as bailiff of Joan of Tattershall, saying that Edmund of 'Pageham' held of Joan the manor of Belaugh by homage, fealty, the service of a knight's fee and 20 shillings a year, of which services she was seised by the hand of his father William, and because after William's death Edmund's relief was arrear, Stephen as Joan's bailiff took the horse in Joan's fee. (*Note continued on the opposite page.*)

8. ANON.[8]

Dower ou jeo n'avera [9] mye la vew de tenemenz dount le baroun morust seisi, tut entra jeo par feffement.

En un bref de dower le tenaunt demaunda la veue.

Lauuf. Nostre baroun morust seisi, par quai etc.

Toud. Nous n'entrames mye par vostre baroun.

Lauuf. Tut seez vous feffé après la [10] mort etc., vous n'averez pas la veue nient plus qe [11] si vous ussez entré par le baroun, depuis q'ele veot averir qe soun baroun morust seisi.

Et non habuit visum [12] etc.

[1] Jon *Vulg.*, *B*; Johan *D*. [2] bayle *Vulg.* [3] couvent (?) *A*. [4] la feme etc. *Vulg.*, *B*. [5] puist *B*; poet *D*, *L*. [6] *Om.* il *A*. [7] eide de baroun etc. *Vulg.* *B*, ; eide del baroun *D*, *L*. [8] *Vulg.* p. 9. Text from *A*: compared with *B*, *D*, *L*. [9] *sic A*. [10] sa *Vulg.* [11] qar *A*. [12] vicem *Vulg.*

Malberthorpe. Aid of her you ought not to have, for she is a stranger to our avowry.

Stanton, J. Be at one as to whether this is or is not the dower of his wife.

And [the defendant] could not deny this, and [the plaintiff] had aid.

Malberthorpe. We pray that Joan may come in aid of her bailiff.

Stanton, J. You must wait until the woman [the plaintiff's wife] comes, and then he [the bailiff] can pray aid [of his mistress, Joan]. (According to some people the woman [the doweress] shall have aid of the heir.[1])

Note from the Record (*continued*).

The plaintiff then pleads that he holds the manor along with one Isabella his wife in dower, and that without her he cannot bring this matter into judgment. Therefore it is ordered that she be summoned to be here on the morrow (Nov. 3) of All Souls (1308). On that day Isabella and her husband, Edmund, appeared, and she joined herself to him in his answer. And they said that they held the manor in dower of the inheritance of Edmund of 'Pakenham,' and that without him they could not bring the matter into judgment. So it was ordered that he should be summoned for the quindene of Easter (1309).

8. ANON.

Dower. A view not granted where the husband died seised, though the tenant did not enter by the husband.

In a writ of dower the tenant demanded a view.

Laufer. Our husband died seised, wherefore etc.

Toudeby. We did not enter by your husband.

Laufer. Although you were enfeoffed after the death [of the husband] you shall not have a view, any more than if you had entry by the husband, since she is willing to aver that her husband died seised.

He did not have a view etc.

[1] Another version says 'of her husband;' but her husband has already had aid from her. The record seems to make this point clear.

9. ANON.[1]

Replegiari ou il conust le plaintif avoir comune, mès nemye oed bestes cochauns e levauns en altre vile, et el dist seisi de chaser e rechaser de temps etc.

La Prioresse de T. se pleynt qe H. de Honedone[2] a tort prist ses[3] avers.

Toud. avowa la prise par la resoun qe H. est seignour del manier de E.,[4] a qui[5] un comune et un wast est apendaunt:[6] le manier de Kirkebi et Henedone,[7] videlicet[8] ij. viles, et ne se[9] entre-comunent[10] pas. Et purceo H. trova les averez[11] la Prioresse chaçantz et rechaçantz a la comune si avowe il en soun several damage fesaunt etc.

Malm. La Prioresse est seisi de la moyté de la seignurri de Honedone,[12] a qui, a lour[13] dit, la comune deit estre appendaunt, et si ad la moyté del manier de K., et vous dit qe de ses[14] bestes cho-chauns[15] et levauns en K. ad ele esté seisi de chacer et rechacher a la comune du temps de la fundacioun de la mesoun, ly et tous ses[16] predecessours etc.

Toud. Nous ne poums dedire[17] qe vous ne devetz comuner, mes ceo est par resoun de append[aunce] en[18] Honedone[19] et nient en Kirkebi.

Malm. Seisi de la comune et de chacer etc. *ut supra,* du temps dount il n'ad memori etc.[20]

10. ANON.[21]

Detenu de chateux, ou piert q'il fut r[espoundu] a soun bref de la terce partye de chatex par usage de pais après la mort soun pere com homme desavauncé.

Ceo vous moustre etc. qe R. et[22] G. executours[23] du testament H.

[1] *Vulg.* p. 9. Text from *A*; compared with *B*, *D*, *L*. [2] H. de E. *B*; Henedun *L*; Enedone *D*. [3] ces *A*. [4] de Kirkeby et Enedone *D*. [5] que *A*. [6] *Ins.* etc. *Vulg.*, *B*. [7] *Initials B, and so throughout.* Kirkeby et Enedene *L*; Kirkeby et Enedone *D*. [8] sunt, *not* videlicet, *Vulg.*; s[cilicet] *B*, *D*. [9] *Ins.* en *A*. [10] ne comunent *Vulg.*, *B*, *D*. [11] avers *D*. [12] Edone *L*; Enedone *D*. [13] qe *A*. [14] cez *A*. [15] cochantz *D*. [16] cez *A*. [17] desdire *D*. [18] de *A*. [19] Edone *L*; Enedone *D*. [20] *Add* prest etc. et alii econtra *B*, *Vulg.* [21] *Vulg.* p. 9. Text from *A*; compared with *B*, *D*, *L*. See Fitz. Abr., *Detinew*, 56. [22] de *B*. [23] exec' *B*, *D*; qe Ric. executour *L*.

9. ANON.[1]

Intercommoning of vills. A plaintiff in replevin prescribes to have common in one vill for beasts levant and couchant in another.

The Prioress of T. complains that H. of E. wrongfully took her beasts.

Toudeby avowed the taking, for that H. is lord of the manor of E., to which a common and waste are appendant, which manor [extends into] two vills, Kirkby and E., which do not intercommon; and because he found the beasts of the Prioress being driven to and from the common, he avows as for beasts damage feasant in his several.

Malberthorpe. The Prioress is seised of a moiety of the lordship of E., to which, so they say, the common ought to be appendant, and so she has a moiety of the manor of K.; and she tells you that from the time of the foundation of their house she and all her predecessors have been seised of driving to and from the common their beasts levant and couchant in K. etc.

Toudeby. We cannot deny that you ought to have common, but that is by reason of appendancy in E. and not in K.

Malberthorpe. Seised of the common and of driving to and from *ut supra* from time whereof there is no memory.

10. ANON.[2]

A son brings a writ of detinue in common form against his father's executors for a bairn's part of his father's goods. The count relies upon a usage of the country. The writ is upheld against the objection that the matter is one for the ecclesiastical court. The objection that the plaintiff has a sister not named in the writ is raised but not maintained. The defendants urge that the plaintiff was 'advanced' by his father. The plaintiff, admitting a certain gift of land, denies that it was an advancement. Demurrer.

This showeth to you [such a one] that R. and G., executors of the testament of H., wrongfully do not render to [the plaintiff]

[1] The record of this case has not been found, and the report is somewhat obscure.

[2] The record of this case has not been found.

a tort ne ly rendent chateux a la valiauns de x. marks. Et purceo a tort, qe[1] la ou l'avauntdit H. soun piere, qi[2] executours il sount, morust en tiel leue et avoit chateux a la valiauns de xxx.[3] marks, scil. furment et orge etc., ou par usage du pays si deit la terce partie demorrer al mort et la une partie a la feme et la une partie a ses[4] enfauntz desavauncetz,[5] par qei[6] après la mort soun piere si vint il a les executours et les pria qe eaux li liverassent[7] la terce partie de chateaux solom les usages etc., il[8] rendre ne voleint[9] ne unqore ne volent[10] etc.

Malm. demaunda oy du bref, et fut de comune forme.

Malm. Vous veez bien com il demaundent x. marchés de chateaux et ne[11] afferment mye par[12] ley coment les chateux luy sount[13] deues, qe[14] il les achata[15] de nous, ne q'il nous bailla les chateux, ne par nulle contracte ne sumes obligé, et demaundoms jugement s'il deyve[16] estre respoundu.

Wilby. Nous avoms assigné cause solom usage du paiys quei[17] assez nous suffit.

Staunton. Cest[18] choce ne serreit[19] pas a pleder hors de la court christienne.

Herle. Nous[20] pledames[21] la, ou[22] mestreint[23] avaunt la prohibicioun et nous defenderent etc., et nous ne poums avoir la consultacioun.

Pass. La cause de soun bref si est de[24] un detenu, la quel est acordaunt a lour fait et est esclari etc.[25] Et d'aultrepart la Graunt Chartre veot qe les chateaux au mort demurgent a les executours, sauve a la[26] femme et a les enfauntz[27] lour renable[28] parties, et desicome la Graunt Chartre le veot, et soun purchace acorde, et aultre bref n'ad il my etc.

West. Il ount demoustré[29] a la court et ount affermé par usage du paiys, a quei lour purchase acorde, et aultre bref[30] n'ad il my; jugement.

Herle. Plees qe ne touchent testament ne matrimoyn deyvent[31] estre pledetz ceinz.

Stauntone. R[espone]z au bref.

[1] qi *Vulg.* [2] que *A.* [3] xxx. *B, D, Vulg.*; xx. *A.* [4] ces *A.* [5] desmarietz *B, D, Vulg.* [6] qe *A.* [7] leverassent *A*; liverassent *B, D.* [8] eux *B.* [9] voilleint *B*; voleient *L.* [10] voillent *B, L.* [11] nous *Vulg.* [12] la *Vulg., B.* [13] fuissent *B*; fussent *D.* [14] qar *A.* [15] qar il ne dit qil les chata *B*; qe il ne dit qil les achata *L*; *simil. D.* [16] doin *Vulg.* [17] qe *B, D.* [18] Ceste *B, D, L.* [19] serra *B, D, L.* [20] Si nous *L.* [21] precedamus *Vulg.* [22] et *L.* [23] mistrent *B*; moustrent *L*; mistront *D.* [24] bref soune en *B, Vulg.*; bref si est en *D.* [25] la quele il ount enclarsi a la court et est assez acordaunt *L.* [26] sa *L.* [27] enfauntetz *A.* [28] revable *Vulg.* [29] *Ins.* le fet *L.* [30] *Om.* bref *Vulg., B, D.* [31] doinent *Vulg.*

chattels to the value of ten marks; and wrongfully for that the said H. his father, whose executors they are, died at a certain place and had chattels to the value of thirty marks, to wit, corn and barley etc., and by the usage of the country the third part thereof ought to remain to the dead man and one part to his wife and one part to his unadvanced children; wherefore upon his father's death he came to the executors and prayed them that they would deliver to him the third part of the chattels according to the usage etc.; but they would not and yet will not etc.

Malberthorpe demanded a hearing of the writ; and it was in common form.

Malberthorpe. You see well how he demands ten marks' worth of chattels and does not affirm by law how the chattels are due to him, for he does not say that he bought them of us, nor that he bailed them to us, and by no contract are we obliged to him. We pray judgment whether he should be answered.

Willoughby. We have assigned a cause, namely, that this is according to the usage of the country, and this suffices us.

STANTON, J. This matter cannot be debated except in Court Christian.

Herle. We did plead there, and they put forward a prohibition and forbade us, and we could not obtain a consultation.[1]

Passeley. The cause of his writ is a detinue, and this accords with the fact and is explained [by the declaration]. Moreover, the Great Charter[2] wills that the dead man's chattels remain to his executors 'saving to his wife and children their reasonable shares,' and since the Great Charter wills this and the writ that he has purchased accords [with the facts] and there is no other writ, [we pray judgment].

Westcote. They have made their declaration to the Court and have affirmed their [cause of action] by the usage of the country, and with this the writ that they have purchased accords, and there is no other writ; so we pray judgment.

Herle. Pleas which do not touch testament or matrimony should be pleaded here.

STANTON, J. You must answer to the writ.

[1] A writ of consultation in effect discharges a prohibition and bids the ecclesiastical court proceed. See Reg. Brev. Orig. 44 ff.

[2] Magna Carta (1297) c. 18: 'salvis uxori eius et pueris ipsius rationabilibus partibus suis.'

Fress. Jugement du bref, qar il ount graunté par lour demou straunce que cest accioun est doné as enfauntz[1] desavauncez,[2] et nous vous dioms q'il y ad une Sare desavauncé nyent nomé en le bref, sore[3] mesme cesti:[4] jugement du bref.

Hengham. Voletz vous ouster cesti de soun recoverir pur ceo qe l'autre est nient nomé (*quasi diceret*[5] *non*) ?

Hunt. Il ount doné cest accioun en comune, qar il ount dit qe la tierce partie de chateaux deit demorrer as enfauntes desavauncés, et il[6] ad une S. desavauncé nyent nomé: jugement du bref.

Malm. Il covent qe le bref seit porté en comune.

Hunt. Quai si ele ne veot pas suer ?[7]

Malm. Seit donques somouns et severé.[8]

Friss. Il siwerent vers eaux com[9] parceners.

Herle. Il ne put[10] pleder a nostre bref abatre, qar il ad pledé al accioun, depuis qu'il diseint que nous ne poums avoir accioun, qe nous ne assignames nul contracte ne obligacioun qe put estre cause de nostre accioun.

Malm.[11] Més nostre conclusioun fut qe la conissaunz de ceo plee appent a la court christien.

Stauntone. Si nous abatoms cest bref nous abateroms count et accioun et tut.

Et puis enparlerent et diseint qe les xxx. marks si aveint il tut paié as creaunçours[12] le testatour forqi[13] x. li. Et de ceo ne put il accioun avoir saunt Sare. Et d'aultrepart soun piere lui lessa xxx. acres de terre en Kent,[14] et issint est il avauncé: jugement.

Herle conust qu'il avoit taunt de terre, més ceo ne valut forqi xl. den. par an, et celuy[15] dona[16] pur chauçure[17] et nient pur avauncement.[18]

Malm. Si nent desavauncement, ergo avauncement.[19]

West. Et nous jugement, depuis qe la terre luy fut doné pur chausure[20] et nient en lieu de avauncement, s'il ne deit recoverir etc.[21]

[1] enfauntez *A*. [2] enfauntz etc. *B*, *Vulg*. [3] seor *L*; soere *D*. [4] desavaunce et nous vous dioms qe mesme cestui Sarre nest nient nome *B*, *Vulg*. [5] doceret *A*. [6] il y *D*. [7] siwere *B*; suwere *D*. [8] *Vulg*. and *B* run question and answer together, ascribing both to Hunt. [9] *Ins*. vers *Vulg*., *B*, *L*, *D*. [10] pount *L*. [11] *Om*. 'Malm.' and run what follows into the preceding speech, *L*. [12] treausours *Vulg*. [13] forspris *L*. [14] Kente *D*. [15] ceo lui *D*. [16] *Ins*. il *D*. [17] chausure *B*, *D*; chausur' *L*. [18] *Add* si il ne doit recoverir *B*, *Vulg*. [19] *Om*. this remark, *Vulg*., *B*; in *L* it follows the next speech. [20] clausure *A*; clausur' *L*; chausure *D*. [21] *Om*. this remark *B*, *Vulg*.

Friskeney. Judgment of the writ, for they have conceded by their declaration that their action is given to the children who are unadvanced, and we tell you that there is a sister of [the plaintiff], one Sarah who is unadvanced, and she is not named in the writ: judgment of the writ.

Hengham, C. J. Think you to oust this one from his recovery because there is another who is not named in the writ? (He implied that this could not be done.)

Hunt. They themselves have conceded that this action should be brought in common [by the unadvanced children], for they have said that the third part of the chattels should remain to the unadvanced children, and there is a certain Sarah who is unadvanced and not named [in the writ]. Judgment of the writ.

Malberthorpe. The writ should be brought in common.

Hunt.[1] What if [Sarah] will not sue?

Malberthorpe. She must be summoned and severed.

Friskeney. They sued against them as against parceners.[2]

Herle. He cannot plead to abate our writ, for he has pleaded to the action when they said that we could have no action since we assigned no contract or obligation as our cause of action.

Malberthorpe. But the conclusion of our plea was that cognizance of this suit belongs to the Court Christian.

Stanton, J. If we abate this writ, we shall abate count and action and all.

And thereupon [the defendants] imparled, and then said that they had paid the twenty marks to the testator's creditors except ten pounds, and as to those he can have no action without Sarah. Moreover, his father leased him thirty acres of land in Kent, and so he is advanced. Judgment.

Herle confessed that [the plantiff] had land to this extent, but it was worth no more than forty pence a year, and this his father gave him as shoe-money[3] and not as an advancement.

Malberthorpe. If it was not a disadvancement, it was an advancement.

Westcote. And we pray judgment whether he cannot recover, since the land was given him for shoe-money and not by way of advancement.

[1] Seemingly this should come from one of the plaintiff's counsel.

[2] The import of this remark is not very plain.

[3] Apparently this is the meaning of *pur chauçure*. Fitzherbert (*Detinew*, 56) gives *creansor*, which at first sight seems preferable, but is not borne out by our MSS. See Du Cange, s. v. *calciatura*.

Malm. Et nous jugement, depuis qe vous avet conu qe vous avez la terre et issint avauncé, et cest accioun est doné par les usages a les nent avauncés etc.

Et sic ad iudicium.[1]

PLACITA DE ANNO REGIS EDWARDI FILII REGIS EDWARDI SECUNDO.

1. ANON.[2]

Appel ou piert qe le puisné friere avera mye la swte, tut seit le eyné chapelein, et ou dit fut q'il swera après l'an.

Symound de Isep [3] suit un appel de la mort William soun friere vers Johan de Oxtone [4] et lui appela de feloni etc.

Herle [5] defendit tut maner de feloni, assaut, engait et qaunt etc. la pees etc. sa coroune et sa dignité etc. Et vous dit [6] qe ly ad [7] un B. ayné de S., friere William, qe mort est, de mesme le piere et de mesme la miere a que soun heritage deveroit descendre, a qi naturelement cest accioun est doné et cest suit appent etc.[8] Jugement si Symound etc. deyve ore estre r[espoundu].

Assceby. Il ne veot pas suer ou par cas il est *infra sacros.* Et S. est de tiel age qu'il put faire la derein,[9] dount aultre est qe [10] s'il fut denz age et nel put pas faire.[11]

Brabazoun. Si S. de Isep fust receu a teil appel, et il fut par cas sauvé,[12] et puis le ayné friere denz l'an et le iour fait [13] soun appel de mesme la mort devers luy, quele choce ne put pas estre denaié purceo qe la suit naturelement a luy appent,[14] par quel appel il serra par cas dampné,[15] si ensiwereit donque qe par une chose il serroit [16] aquité et

[1] MS. *P* has the following note, of later date than the text: 'Oppinion est qe primes les dettes le baroun paiés serroient, e pus le testament execut, e qe la femme ne les enfaunz n'averount pas actioun etc. si le baroun eit devisee tutz ses biens. Mès après les dettes paiés et le testament execut, de residuo uxor et pueri capiunt partem suam ex consuetudine et non de rigore iuris.' [2] Not in *Vulg.* nor in *B.* Text from *A*: compared with *P*, *D.* [3] Yseltrop *P*; Ysep *D.* [4] Extone *P.* [5] Hertep *P.* [6] dioms *P.* [7] qil y ad *D.* [8] a qi ceste sute apente naturelement *P.* [9] dereigne *D.* [10] qar *A*; *om.* qe *P*, *D.* [11] et qil ne poet fere dereigne *P.* [12] si J. de Extone fut ore aquite a ceste appel et fut par cas sauve *P.* [13] feit *P.* [14] naturelement est al eygne done *P.* [15] *Om. to after next* dampne *A.* [16] *Ins.* par cas *D.*

Malberthorpe. And we pray judgment since you have confessed that you have the land and so are advanced, and since this action is given by the usages [of the country] to those who are unadvanced etc.

And thus the case stands for judgment.[1]

PLEAS OF THE SECOND YEAR OF KING EDWARD II. (1308–9.)

1. ANON.[2]

An appeal of homicide brought by one who has an elder brother is abatable. *Semble* it would be so though the elder brother were in holy orders.

One Simon sued an appeal for the death of his brother William against one John and appealed him of felony etc.

Herle[3] defended all manner of felony, assault, waylaying and all that is against the King's peace, his crown and dignity etc. And [said he] we tell you that there is one B. elder than Simon, brother of William the dead man, by the same father and mother, to whom the heritage ought to descend and to whom this action is naturally given and this suit belongs. Judgment if Simon etc. ought now to be answered.

Ashby. [The elder brother] will not sue or perchance he is in holy orders; and Simon is of such an age that he can make the deraignment. And so it is otherwise than if he were within age and could not make the deraignment.

Brabazon, C. J. B. R. If Simon were received to make this appeal and perchance [the appellee] were saved, and afterwards within the year and day the elder brother made his appeal against him for the same death, the [legitimacy of the elder brother's appeal] could not be denied, for the suit naturally belongs to him. And so it might happen that the appellee would be condemned at the suit of one and

[1] An early comment on this case (see opposite page) says: 'The opinion is that first the husband's debts should be paid and then the testament should be executed, and the wife and children have no action if the husband has devised all his goods. But, after debts paid and testament executed, the wife and children take their shares by custom, and not by the rigour of the law.'

[2] Record not found. Proper names not reliable.

[3] Or Hartlepool.

dampné[1] al appel de ij. appellours, qe serreit inconvenient de ley. Par quei agarde[2] cest court que Johan de Oxtone en dreit de cest appel ayle quites, et S., purceo q'il emprist cest appel qe a ly ne appendit,[3] a la prisoun taunqe nous seoms avysé pur le Roi utrum videlicet debeat apponi modo per regem vel interim moratur etc.[4] quousque annus et dies transierint et quod constare[5] posset curie si[6] senior voluerit appellare.

Et puis l'an le appelour sura[7] *Roub.* pur sa deliveraunce. Et il dit que il covent q'il eit la prisoun et la penaunce ovesqes, mès ele ne serra pas mout grevose.

Postea le appelour et appelatus fuerunt[8] manucapti etc. usque etc.

2A. MORTIMER *v.* LUDLOW.[9]

Entré, ou il alege altre estre tenaunt de la terce party par jugement, et le demaundaunt ne poeyt avenir a dire tenaunt etc. le jour [du bref purchasé][10] ne qe el n'esté pas seisi par jugement sauncz conustre sa seisine et[11] puis dire coment altrement seisi etc.

Cui in vita, ou le tenant allegge nountenure, de sa mere demene par un recoverir q'ele avoit par bref de dower, issi q'il mesmes fut tenant de les deus parties et sa mere de la terce partie. Et unqore le demandant recovere l'enter devers ly. Et est racio quia la femme n'avoit pas suy bref de execucioun tauntqe après le jour qe la demandante avoit porté soun bref. Et ceo fut trové par enqueste. Ideo consideratur per Ber. quod petens recuperet demandam pur ceo q'il dit qe fraunctenement ne passe mie par recoverir mès par liveré de seisine.

Margerie qe fut la femme William de Mertone porta le *cui in vita* vers William de Loddelowe.

Herle. Nous ne poums sa demaunde rendre, qar nous ne sumes pas pleynement tenaunt, qar une M. recovery devers nous en cest court la terce partie de mesme le manoir et est huy ceo jour seisi, et demandoms jugement de ceo bref.

[1] et *A*, *D*. [2] *Ins.* fut *A*; *om. P*. [3] *Ins.* qil ayle *P*. [4] *Om.* vel . . . etc., *a blank being left*, *P*. [5] liquere *P*. [6] *Apparently* quem *A*; quod *P*, *D*. [7] sura *A*; suwera *D*; siwereit *P*. This may be the end of the preceding judgment, and the inflections point that way. If so, some statement that the demandant did sue may have dropped out. [8] fuerint *A*. [9] *Vulg.* p. 10. Text from *A*: compared with *B*, *D*. Second headnote from *Q*. [10] jour etc. *A*. [11] *Om.* et *A*.

acquitted at the suit of another of two appellors, and this would be a contradiction in law. Wherefore this court awards that John go quit in the matter of this appeal, and that Simon, because he took upon himself this appeal which did not belong to him, go to prison until we are advised on the King's behalf whether [the appellee] is now to be apposed on the King's behalf,[1] or whether the matter is to be delayed until the year and day have elapsed and it be known to the court whether the elder brother will prosecute an appeal. And after the year let the appellor [Simon] sue for his deliverance.

[And after the year Simon sued for his deliverance] to Roubury [J.], who said that he must have prison and penance [2] too, but that it ought not to be very grievous.

Afterwards the appellor and appellee were mainprised etc. until etc.

2A. MORTIMER *v.* LUDLOW.[3]

In an action for land by *A* against *B*, the tenant (*B*) pleads that he is not fully tenant, since *X* has recovered against him by judgment seisin of a third part. The demandant (*A*), after endeavouring to reply (1) that *B* was seised of the whole at the date of writ purchased, and (2) that *X* was not seised under the judgment at the date of writ purchased, is driven to the issue that *B* was seised of the whole at the date of plea pleaded. This issue is found for *A* and he has judgment, the justices refusing to inquire of the jury whether *X* was seised under her judgment at the date of the verdict. *Per* Bereford, J. :—A judgment does not confer the freehold upon the recoveror.[4]

Margaret, wife that was of Edmund de Mortimer, brought her *cui in vita* against William of Ludlow.

Herle. We cannot render her the whole of her demand because we are not tenant of the whole, for one Agnes recovered against us in this court the third part of the said manor and is this day seised thereof. We pray judgment of this writ.

[1] When an appeal was quashed for formal reasons, the appellee was 'apposed' by the court, *i.e.* he was put to answer the accusation as if he were indicted.

[2] On the nature of this *peine* information is wanting. Can it be the fine inflicted under Stat. West. II. (13 Edw. I.) c. 12 ? Apparently the appellor is being dealt with under that Statute as having made a false appeal. As to this point, however, see Coke, Sec. Inst. 385.

[3] Proper names from the record.

[4] In Maynard's Table (under *Non-tenure*) the case is summarized thus :—'A writ lies by a stranger against the tenant, notwithstanding a judgment and recovery against him.'

Pass. Pleynment tenaunt le jour de nostre bref purchacé, prest etc.

Herle. A ceo ne devetz avenir, qar nous vouchoms record *ut supra*[1] qe nous la rendymes dower, de le quil[2] el est huy ceo iour seisi, prest etc.

Malm. Nostre[3] averment trenche sur la seisine, scil. qe vous fustes[4] seisi del entier le jour etc. *ut supra*, de la quel possessioun le record fait nul mencioun, le quel averment vous refusez, et demandoms jugement, et voloms averrir qe el n'est my seisi par vertue del jugement.

Toud. Vous ne purretz[5] estre receu a teil averrement.

[6] *Brabazoun.* Pur quei noun? Jeo pose qe après le recoverir ele ust relessé et prist novelle estat par aultre tittle, si[7] serreit tiel averement resonable.[8]

Herle. Qe ne pledent il par la?

Hert. Nous voloms averir q'ele n'est pas seisi par execucioun del jugement.

Brab. Si ele recovere par jugement et la partie puis la mist en seisine en pais sauntz bref,[9] n'entendetz vous mie qe cele seisine serroit assez bon (*quasi diceret sic*)?

Malm. Ceo serroit alien[10] qaunt a nous.

Brab. Si vous recoverissetz ore l'entier et ele fuist ousté et porta soun bref d'avoir execucioun solom le premir jugement, ne la avereyt ele (*quasi diceret sic*)? Ore vaut plus qe ele est einz.

Malm. Ceo serroit dreit procès.

Pass. Autrement ensuereit teil durès,[11] q'après qe la femme averoit recovery, le tenaunt par covigne[12] se tendreit toux jours einz x. aunz ou xij. pur tollir le recoverir celui qe dreit ad,[13] qe a quel houre qu'il purchacera soun bref, la averoit ele adonqe et[14] adeprimes sa seisine pur abatre le bref.

Herle. Conusetz ore la seisine et puis assignez[15] tiel collusioun ou[16] quel res[oun] qe vous volez.

Scot.[17] Nous voloms averrir unqore q'ele n'est mye tenaunt par cel jugement.

Sprigo. La court est ascerté del render, et houy ceo jour est

[1] *Ins.* et *D.* [2] la quele *B*, *D.* [3] Vostre *Vulg.*, *B.* [4] qar vous fissez *A*; fustez *Vulg.*; fuistes *B*; fussetz *D.* [5] poetz *D.* [6] *Ins.* W *A.* [7] ne *B*, *D*, *Vulg.* [8] resceivable *B*, *D*, *Vulg.* [9] *Omit from here to after* avoir *in Brabazon's next remark A.* [10] alien' *B*; a rien *Vulg.*; alienacion *in full D.* [11] cele duresse *B.* [12] congie *B*; conge *D.* [13] droit en eide *Vulg.*; dreit en ad *D.* [14] *Om.* et *Vulg.*, *B. D.* [15] *Apparently* assignment *A.* [16] en *A*, *B*, *D.* [17] Stant. *Vulg.*; St.' *B*; Scot. *D.*

Passeley. Fully tenant on the day of the purchase of our writ. Ready etc.

Herle. To that you cannot get, for we vouch the record as above that we rendered dower [to Agnes], who is this day seised thereof. Ready etc.

Malberthorpe. Our averment goes to the seisin, to the effect that you were seised of the whole on the day [of the purchase of our writ], as above, and of [your] possession the record makes no mention. And this averment you refuse. So we demand judgment, and will aver that she [Agnes] is not seised by virtue of the judgment.

Toudeby. You cannot be received to such an averment.

Brabazon, C.J.B.R.[1] Why not? I put case that after the recovery, she [Agnes] released and took a new estate by another title. Would not such an averment be receivable?

Herle. Why then did they not plead in that way?

Hartlepool. We will aver that she is not seised by execution of the judgment.

Brabazon. If she [Agnes] recovers by judgment and the party [against whom she recovers] puts her in seisin *en pays* and without writ, do not you think that this seisin would be good enough?

Malberthorpe. That would be nothing to us.[2]

Brabazon. If you were to recover the whole now, and she [Agnes] were ousted and brought her writ to have execution under the first judgment, would she not have it? (He implied that she would.) And now she is in, and that makes the case stronger.

Malberthorpe. That would be the right procedure.[3]

Passeley. Were it otherwise this hardship would ensue, that, a woman having recovered, the tenant would still keep possession for ten or twelve years and would deprive of his recovery the person who had right; for, when that person purchased a writ, then and for the first time the woman would have her seisin, and so the writ would be abated [by a plea of non-tenure].

Herle. First confess [Agnes's] seisin, and then assert that there has been collusion or urge such reasons as you think fit.

Scotre. We will aver once more that she is not tenant under this judgment.

Spigurnel, J. The Court is certified that the tenements were

[1] Brabazon and Spigurnel belong to the King's Bench, while Stanton belongs to the Common Bench.

[2] Text dubious.

[3] Namely that we should recover now, and that then Agnes should try what she could do with a writ of execution.

trové en seisine, par quei la court ne pout aultre entendre [1] mez qe ceo seit par vertu del rendre taunqe vous nous avetz ascerté q'ele est seisi d'aultre estat. Et primes [2] il covent vous conustre la seisine et puis moustrer qe ceo est par aultre estat qe par jugement de cel rendre.

Scot.[3] Nous [4] vous dioms qe noun.

Herle. Houy ceo jour en seisine par cel jugement, prest etc.

Hervi. Sachietz qe si homme trove qe ele fut en seisine, n'enquerroms [5] mye par quel tittle.

Malm. Cest nountenure est de autre nature [6] qe [7] comune nountenure, purceo q'ele est especiale en taunt q'il dit q'il ne tyent my l'entier purceo qe ele teint partie par jugement. Par quai il covent traverser cel point, qe est soun principal, auxint com il le me done a dire nient par jugement.

Herle. Conusez la seisine, mès nient par execucioun del jugement, et demorroms [8] en jugement.[9]

Toud. Vous mesmes houy ceo jour tenaunt del entier, prest etc.

2B. MORTIMER *v.* LUDLOW.[10]

La dame de Mortymer porta son *cui in vita* vers W. de Ludelowe et demanda les ij. parties del manier de Marclee.

Herle. Agnes la miere W. tent la terce partie de ij. parties, nent nomé en le bref. Jugement de bref.

Pass. Pleinement tenant jour de bref purchacé, prest d'averrer.

Toud. A cel averrement ne devez estre receu, qar nous vous dioms qe mesme cesti [11] Agnes porta son bref de dower vers cesti W. as utaves de Seint Hillari l'an etc. xxxj., et recoveri par jugement de la court et est huy ceo jour seisie.[12] Jugement etc.

Malb. Il allegge un nountenure, a qi nous respondoms pleinement tenant etc., com affert a cel [13] excepcion.[14]

Stauntone. C'est un especial nountenure et nemye general, et

[1] *Apparently* autrement entendre *should be read. D shows that* autrement *was written.* [2] primez *A*; primer *D.* [3] Stant. *Vulg.*; St. *B.* [4] Ja nous *B.* [5] nenquerres *Vulg.* [6] *Om.* nature *A, Vulg., B, D. Supplied by conjecture.* [7] *Ins.* de *B.* [8] demuretz *D.* [9] *Om.* et. . . . jugement *B, Vulg.* [10] Not in *A, B, D,* or *Vulg.* From *M,* with collation of *R, P.* [11] ceste *R, P.* [12] *Om.* seisie *M.* [13] tiel *R.* [14] pleynement tenant jour du bref purchase *P.*

rendered to her,[1] and this day she is found seised of them, so the Court cannot but presume that she is seised by virtue of the render until you have asserted that she is seised of some other estate. And first you must confess the seisin, and then you may show that she is 'in' of some estate other than by judgment on the render.

Scotre. We say that it is not so.[2]

Herle. This day she is seised under the judgment. Ready etc.

STANTON, J. Know this, that if we find that she was seised, we shall not inquire by what title.

Malberthorpe. This plea of non-tenure is not like the common plea; for it is special, inasmuch as he says that he does not hold the whole, since [Agnes] holds part by a judgment. Therefore it behoves us to traverse this point [namely, that the seisin is under the judgment], for this is the principal point; so that it allows me to say, 'Not under the judgment.'

Herle. Confess the seisin, but add 'Not by execution of the judgment,' and then we will demur in judgment.

Toudeby.[3] This day you yourselves are seised of the whole. Ready etc.[4]

2B. MORTIMER *v.* LUDLOW.[5]

The Lady of Mortimer brought her *cui in vita* against W. of Ludlow, and demanded two parts of the manor of Marcle.

Herle. Agnes, mother of W., holds the third part of the two parts, and is not named in the writ. Judgment of the writ.

Passeley. You were fully tenant on the day of writ purchased. Ready to aver.

Toudeby. To that averment you ought not to be received; for we tell you that this same Agnes brought her writ of dower on the octave of St. Hilary in 31 [Edward I.], and recovered by the judgment of the court; and this day she is seised. Judgment etc.

Malberthorpe. He alleges a non-tenure, and we reply 'Fully tenant,' which is the correct reply to this plea.

STANTON, J. This is not a general but a special non-tenure, and

[1] As appears from the record, the tenant in the previous action had rendered the tenements without contest.

[2] We do not, that is, accept your view of the law.

[3] But this must come from counsel for the demandant.

[4] Another report of this case follows.

[5] The following report seems to relate to the same case as that which has just been before us, but carries the story to a later stage. It is found in a set of reports for Trin. ann. 2.

l'averrement qe vous tendez si est general, par qei nemye resceivable.

Malm. Dient[1] donqe après ceo q'ele recoveri qe ele entra par my le recoverir com appent, et sur ceo pernent l'averrement.

Staunton. L'averrement n'est mye resceivable, qe nous prendroms nul averrement qe touche execucion en ceo cas.[2]

Malb. Il alleggent un especial nountenure entaunt com il[3] dient q'ele recovera,[4] mès nous vous dioms qe long tenps avaunt q'ele porta son bref de execucion si fut nostre bref purchasé.[5] Dont, si nostre bref deust abatre, si covent qe vous alleggez un defaute en la partie, qar[6] la dame n'ad nul rien offendu, tut eit ele suwy bref de jugement pendaunt nostre bref. Dont nous demandoms jugement.[7]

Staunt. Tut eussez vous[8] recoveri les[9] tenemenz demandez, si ele portast[10] son *scire facias* vers vous ele recovereit.[11]

Scot. N'est pas merveille, qar ele recoveri de plus auncien dreit.[12]

Malb. Il se covere[13] par un especial nountenure, et la traversoms, et dioms q'ele ne fut unqes seisi par vertue de execucion, qar plus naturelment ne pusse[14] jeo[15] prendre issue de ple[16] qe[17] a[18] traverser son dit. Le quel especial nountenure il ne mayntent[19] nent. Et demandoms jugement, de pus qe nous tendoms issue de plè le quel il refusent, coment nous devoms departir.

Staunt. Tut vousit[20] la partie resceivre cel[21] averrement, nous le[22] resceivroms pas. Mès tendez d'averrer qe huy ceo jour pleynement tenant et nous le[23] receivroms et nent autrement.

Scot.[24] Ceo serra duresce de ley q'ele deveroit nostre bref abatre pur reson de une execucion qe se fit après nostre purchaz,[25] qar issint put chescun[26] estre deceu.[27]

Et pus tendrent d'averrer qe mesme le jour pleynement tenant, et ne put autre issue avoir.[28] L'enqueste vint et fut chargé si William le[29] jour de plè seisi fut enterement de la demande.[30] Qe disseint q'il fut plein[31] tenant.[32]

Herle. Si jugement se face sanz plus enquere del enqueste,[33]

[1] *Om.* Malm. dient, *thus fusing two speeches together*, *M.* *Om.* this speech and next *P.* [2] averement de chose qe touche en ceo cas execucioun *R.* [3] ele *P.* [4] recovery *R.* [5] nostre baroun purchasour *M.* [6] mes *P.* [7] *Om. this last clause P.* [8] ore *R*, *P.* [9] de *M.* [10] cele portereit *R.* [11] vous et recovereyt son dower jatardiz *R.* [12] recoveri de aunciene *M*; recovery de pluis haut *P.* [13] eydent *R*; covere *P.* [14] pus *R.* [15] *Ins.* traverser ne issue de plee *R.* [16] *Om.* issue de ple *R.* [17] mes *R.* [18] *Om.* a *P.* [19] meyntenent *R*, *P.* *Add* jugement *and end speech*, *P.* [20] veuset *R*; mesqe la partie veusit *P.* [21] tiel *R.* [22] ne *R.* [23] vous *R.* [24] Ston. *P.* [25] nostre bref purchace *R.* [26] *Ins.* homme *R.* [27] receu *P.* [28] *Om. last clause P.* [29] *Om.* le *M.* [30] plee fut seisi *P.* [31] pleynement *R.* [32] *Om. this sentence P.* [33] *Ins.* il *P.*

the averment that you tender is general, and therefore is not receivable.

Malberthorpe. Then let them say, as they ought, that after this recovery she entered by the recovery, and upon that let them take the averment.

STANTON, J. The averment is not receivable, for in this case we will receive no averment as to execution [of the judgment].

Malberthorpe. They allege a special kind of non-tenure when they say that [Agnes] recovered, but we tell you that long before she brought her writ of execution our writ was purchased. So if our writ is to be abated, it behoves you to allege a default in [our client], and she has committed no offence even if [Agnes] has sued a judicial writ while our writ was pending. So we demand judgment.

STANTON, J. But even if you were to recover the tenements that you demand, then, if she brought her *scire facias* against you, she would recover.

Scotre. No wonder, for her recovery was by an older title.

Malberthorpe. They have recourse to a special non-tenure, and we traverse it and say that she was never seised by virtue of any execution, and there could be no more natural issue for this plea than our traverse of what they said. And they do not maintain their special non-tenure. And since we tender an issue of the plea, which issue they refuse, we demand judgment in what wise we shall leave the court.

STANTON, J. Even if [the tenant] wished to receive the averment, we would not receive it. You must tender an averment that this day he is fully tenant. We will receive that averment and none other.

Scotre. It would be a hardship in the law if she might abate our writ by reason of an execution which took place after our writ was purchased, for in that way every [demandant] might be deluded.

Afterwards [the demandant's counsel] tendered to aver that [William] was that day fully tenant: they could have no other issue. So the inquest came and was charged to say if on the day of the plea William was fully seised of what was demanded. The inquest said that he was fully tenant.

Herle. If a judgment is made without further inquiry from the

ensuwereit [1] qe un jugement defreit un autre. Par qei, coment qe nous eioms pledé, nostre plè [2] ne nous [3] put cheir [4] en prejudice celui [5] qe n'est pas partie ove nous.[6] Par qei demandez del enqueste si ele soit huy ceo jour seisi ou noun par vertue de son recoverir.

Ber. Ceo serreit d'enquerre de ceo [7] qe vous ne pledastes mye, qar nous regardoms la conissance [8] William, qar il conust q'il fut tenant jour de [9] bref purchacé et trové est outre [10] par enqueste qe [11] mesme le jour qe vous pledastes qe W. fut seisi.[12]

Herle. Nous entendoms [13] qaunt jugement se fet en cest [14] court pur nul homme [15] en play de terre qe meyntenant passe [16] franctenement en la persone celui qe recovere,[17] coment qe execucion se targe.

Ber. Vous dites mal,[18] qar [19] franctenement ne passe jammès si la q'il eit liveré de seisine [20] par baillif le Roy, et ceo par agarde [21] de court. Qar [22] jeo pose qe Agnes qe recoveri eust [23] entré en la terce partie de sa teste demene et eust ousté William, William eust recoveré [24] par assise. Et pur ceo qe trové est par enqueste [25] qe William fut seisi le jour q'il pleda ove la dame enterement de la demande, si agarde cest court qe la dame recovere seisine de terre [26] et l'autre en la mercy etc.[27]

2c. MORTIMER *v.* LUDLOW.[28]

Is[abel] de Mortimer porta le *cui in vita* vers William de Lodlow del manoir de M.

Herle. Agnes la mere W. tent la terce partie, nent nomé etc.

Pass. Pl[einement] tenant jor du bref purchasé.

Herle. A ceo ne devez avenir, qar Agnes recoveri la terce partie par bref de dower (et allegga en certain) et est seisie.

Par qei *Pass.* ne pout pas avoir l'averement.

Pass. Agnes ne fut unqes seisie par execucion de ceo jugement. (*Non allocatur.*)

Pass. W. est hui ceo jor pl[einement] tenant. Prest etc. Et alii econtra. Trové fu par enquest qe W. fu pl[einement] tenant le jor du plé.

[1] *Ins.* graunt duresce *P.* [2] pleder *R.* [3] *Om.* nous *R, P.* [4] chere *R.* [5] cele *R.* [6] partie al jugement *P.* [7] denquere dun poynt *R.* [8] *Ins.* de *R.* [9] du *R, P.* [10] *Om.* outre *M.* [11] et trove est auxi qe *P.* [12] *Om. last four words M. Text from P.* [13] *Ins.* qe *P.* [14] ceste *R, P.* [15] *Om. last three words P.* [16] *Ins.* le *R.* [17] recoveryst *P.* [18] Berr. Nanil *P.* [19] qe *M. Ins.* le *R.* [20] si liverre de seisine ne seit fet *R.* [21] garaunt *R.* [22] qe *M.* [23] est *R.* [24] W. recovereyt *R.* [25] lenqueste *R.* [26] *R ends.* [27] si agarde etc. qe ele recovere *P.* [28] Text from *X.*

inquest, it will follow that one judgment will defeat another. For, no matter how we pleaded, our plea cannot prejudicially affect one who was no party to our suit. Therefore you should ask of the inquest whether or no [Agnes] is this day seised by virtue of her recovery.

Bereford, J. That would be to inquire touching something that you did not plead. For we have regard to William's confession, for he confessed that he was tenant on the day of writ purchased, and now it is further found by the inquest that [he was tenant] on the day of your plea.

Herle. We understand that when in a plea of land a judgment is made in this court for any man, then forthwith the freehold passes into that man's person, albeit execution of the judgment be delayed.

Bereford, J. Not so. Freehold never passes until seisin is delivered by the King's officer with the Court's warrant. Put case that Agnes, who recovered, had of her own head entered into the third part and ousted William: he would have recovered by assize.[1] And for that it is found by inquest that William on the day when he pleaded against the lady was fully seised of what she demanded, this Court awards that the lady recover seisin of the land and that he be in mercy etc.

2c. MORTIMER *v.* LUDLOW.[2]

Margaret de Mortimer brought the *cui in vita* against William of Ludlow for the manor of M.

Herle. Agnes, William's mother, holds the third part and is not named [in the writ].

Passeley. [William was] fully tenant on the day of writ purchased.

Herle. To that you cannot get, for Agnes recovered the land by writ of dower (and he specified the recovery) and is seised.

So *Passeley* could not have that averment.

Passeley. Agnes was never seised by execution of that judgment. (Not allowed.)

Passeley. William is this day fully tenant. Ready etc.

Issue joined. It was found by inquest that William was fully tenant on the day of the plea.

[1] See the strong statement of this doctrine in Y. B. 20–1 Edw. I., p. 53; also Y. B. 33–5 Edw. I., p. 201.

[2] This is given as a good specimen of the condensed reports in the Bodleian MS. Tanner, 13.

Herle. Nous prioms q'il seient chargez si Agnes seit seisie hui ceo jor. (*Non allocatur.*)

Herle. Par le jugement passe le franctenement en celi qi recovere.

Ber. Nanil, qar s'il entre sanz execucion le tenant avera l'assise. Par qei agardé fu qe la demandante rec[overist] etc.

Note from the Record.

De Banco Roll, Mich., 2 Edw. II. (No. 173), r. 22, Heref.

Under the heading 'Octave of St. Michael' [1308], Margaret, wife that was of Edward de Mortimer, by her attorney demands against William of Ludlow two parts of the manor of Great Marcle (with certain exceptions) as her right by the gift of Walter de Balun, who thereof enfeoffed Margaret and her husband Edmund, and into which William of Ludlow has no entry except after (*post*) the demise made to Reginald de Balun by the demandant's husband Edmund, whom in his lifetime she could not contradict. [The writ, therefore, is *cui in vita* in the *post*.]

William pleads that he need not answer to this writ, for he does not hold the whole of the tenements; for he says that one Agnes, wife that was of Laurence of Ludlow, holds a third part; for he says that in the King's Court in Michaelmas Term, 31 Edw. I., before the Justices at York, Agnes recovered seisin of this third part as her dower, by virtue (*pretextu*) of which recovery she is seised thereof. And so he prays judgment of the writ.

Thereupon the rolls of the said term were searched, and it was found that the said Agnes demanded the third part of the manor as her dower against William, who came into court and rendered it to her, and thereupon it was adjudged that she should have her seisin. (*Note continued on the opposite page.*)

3. THACKSTEDE *v.* FREBARN.[1]

[Assise de mort d'auncestre],[2] ou excepcioun de drein seisi fut aleggé en la persone de uncle le demaundaunt et conu, mès qe fut tolour a soun frere mulney. Ideo quere.

Assisa venit recognitura si Thomas filius Radulfi de Bredeford, avunculus Emme uxoris Thome de Thackstede, fuit seisitus in dominico suo ut de feodo de uno mesuagio et una acra prati cum

[1] *Vulg.* p. 10. Text from the record, De Banco Roll, Mich. 2 Edw. II. (No. 173), r. 17, Mid. The MSS. of the Y. B. give copies that are fairly correct.
[2] Supplied by editor.

Herle. We pray that [the jurors] be charged [to say] whether Agnes be seised to-day. (Not allowed.)

Herle. By the judgment freehold passes to the recoveror.

Bereford, C. J. No; for if he enters without execution the tenant shall have the assize.

So it was awarded that the demandant should recover etc.

Note from the Record (*continued*).

Then Margaret replies that William is wholly seised of the tenements demanded against him and prays that this be inquired by the country. And William does the like. A *venire facias* is awarded.

Then a *postea* states that on the octave of Trinity in the said year [*i.e.* 1309], before William of Bereford and his fellows, the parties came here and also the jurors. And the jurors said upon their oath that at the said octave of Michaelmas [1308] William wholly (*integre*) held the said two parts demanded against him without Agnes having anything in the said third part (absque hoc quod predicta Agnes aliquid habuit in predicta tercia parte etc.). And so it is awarded that the said Margery recover her seisin against the said William of the two parts demanded against him, and that William be in mercy.

The record shows no trace of the lively struggle described in the reports. The key to that struggle seems to be a suspicion on the part of the demandant that the tenant and the doweress are colluding. They appear to be son and mother.

3. THACKSTEDE *v.* FREBARN.

The eldest of three brothers dies seised in fee and without issue. The youngest brother enters and at once alienates. The middle brother, returning from foreign parts, attempts to enter, but is impeded. He maintains a continual claim until he dies, and (apparently) leaves a daughter. She brings the mort d'ancestor as on the death of her uncle, the eldest brother. *Qu.* whether she is repelled from the assize by the seisin of the third brother, or whether he is to be treated as a mere 'toller.'

The assize comes to find whether Thomas, son of Ralph of Bredeford, uncle of Emma, wife of Thomas of Thackstede, was seised in his demesne as of fee of one messuage and one acre of meadow

pertinenciis in Stanes die quo obiit, et si obiit post coronacionem domini Henrici Regis etc. et si eadem Emma propinquior heres etc. que Joanna Frebarn de Chadderleye tenet. Et venit et alias dixit quod predicta tenementa fuerunt in seisina quorundam Johannis filii Galfridi de Lalham et Willelmi de Cranesle, qui de tenementis illis feoffaverunt ipsam Johannam tenenda ad terminum vite sue tantum etc. Et dixit quod reversio eorumdem tenementorum post decessum ipsius Johanne spectat ad quemdam Johannem de Cranesle, consanguineum et heredem predicti Willelmi, et vocavit ipsum Johannem inde ad warrantum etc.

Qui modo venit per summonitionem et ei gratis warrentizat. Et dicit quod assisa non debet inde fieri. Dicit enim quod quidam Radulfus frater predicti Thome, de cuius morte etc., post mortem eiusdem Thome recenter intravit tenementa illa et per annos et dies seisinam suam inde continuavit, et hoc paratus est verificare etc., et, cum predictum breve ferri debeat de seisina ultimi seisiti de eodem sanguine, petit iudicium etc.

Et predicti Thomas et Emma bene cognoscunt quod predictus Radulfus frater predicti Thome, de cuius morte etc., ultimo fuit seisitus de predictis tenementis, set dicunt quod seisina sua eis nocere non debet in hac parte. Dicunt enim quod idem Radulfus post mortem eiusdem Thome, de cuius seisina etc., intravit in tenementa illa et infra tres dies postquam intravit tenementa illa alienavit. Et quidam Willelmus frater ipsorum Thome et Radulfi medius et senior ipso Radulfo tempore mortis ipsius Thome agens in partibus remotis, audito rumore de morte eiusdem Thome fratris sui senioris, accessit ad partes illas clamando statum suum successionis, et voluit intrasse tenementa illa, et ille extraneus cui tenementa illa alienata fuerunt ipsum non permisit intrare. Unde dicunt quod idem Willelmus per dimidium annum usque ad tempus mortis sue semper clamavit statum suum et peciit ingressum in tenementis illis. Et petunt iudicium si predicta seisina ipsius Radulfi iniuriosa, qui quidem Radulfus fuit ablator ipsius Emme, in hac parte debeat eis obstare.[1]

[1] In general it is a good answer to a *mort d'ancestor* that since the death of the ancestor named in the writ another person of the same blood has been seised. This is the 'exception of last seisin.' A common reply is that this other person came in as a mere 'snatcher' (Lat. *ablator*, Fr. *tollour*) of the vacant inheritance. The French noun is made from the good O. Fr. verb *toudre* or *tollir* (= Lat. *tollĕre* or Vulg. Lat. *tollĕre*).

with the appurtenances in Staines on the day on which he died, and whether he died after the coronation of King Henry [III.], and whether the said Emma is his next heir, which tenements Joan Frebarn of Chaddesley holds.

And Joan came aforetime and said that the tenements were in the seisin of John, son of Richard of Laleham, and William of Cranesley, who thereof enfeoffed the said Joan only for the term of her life. And she said that the reversion thereof after her death belongs to one John of Cranesley, cousin and heir of the said William; and she vouched John to warranty.

And the said John now comes by summons and without compulsion warrants. And he says that an assize there ought not to be. For he says that one Ralph, brother of Thomas, upon whose[1] death [the assize is brought], entered the tenements at once after the death of Thomas and continued his seisin for years and days; and this he is ready to verify; and whereas this writ [of mort d'ancestor] ought to be brought on the seisin of the person of the same blood who is last seised, he demands judgment.[2]

And the said [plaintiffs] Thomas and Emma fully confess that the said Ralph, brother of the said [Thomas], upon whose death the assize is brought, was last seised of the tenements; but they say that his seisin ought not to hurt them in this case. For they say that the said Ralph, after the death of Thomas, upon whose seisin [the assize is brought], entered the tenements and within three days after his entry alienated the tenements; and one William, middle brother of Thomas and Ralph and elder than Ralph, being in foreign parts at the death of Thomas and having heard a rumour of the death of Thomas his brother, went to those parts [where the said tenements are], claiming his estate by succession, and would have entered the tenements; and the stranger to whom the tenements were alienated did not suffer him to enter; and [the plaintiffs] say that the said William for half a year until his death always claimed his estate and always sought entry into the tenements. And [the plaintiffs] pray judgment as to Ralph's injurious seisin, whether it should prejudice them in this matter, Ralph having snatched ('tolled') the tenements from the said Emma.

[1] It is upon the death of Thomas that the assize is brought.

[2] Apparently Richard of Bredeford had three sons: (1) Thomas, (2) William, (3) Ralph; and Emma is daughter of William, while the warrantor of the tenant claims under Ralph, the third son.

Et predicti Thomas et Emma quesiti per iusticiarios si predictus Radulfus fuit frater predicti Thome, de cuius morte etc., de eodem patre et eadem matre, dicunt quod idem Radulfus fuit frater uterinus ipsorum Thome et Willelmi et de eodem patre [1] etc.[2]

Postea datus est dies partibus hic a die S. Hillarii in xv. dies prece petentium, salvis partibus racionibus hinc inde etc. Postea datus est dies partibus hic a die Pasche in xv. dies etc., et preceptum est vicecomiti quod venire faciat hic ad prefatum terminum predictam assisam etc. Ad quem diem partes venerunt per attornatos suos, et datus est eis dies hic in crastino S. Johannis Baptiste etc., salvis partibus etc. Postea ad diem illum venerunt partes per attornatos suos, et datus est eis dies hic a die S. Michaelis in xv. dies de audiendo iudicio etc., eo quod iudicium nondum etc. Ad quem diem venerunt partes etc., et concordati sunt per licenciam etc. Et predictus Johannes de Cranesle dat unam marcam pro licencia concordandi. Et habent [3] cirographum per R. de Hedone narratorem etc.[4]

4. SINGLETON *v.* KIRKBY.[5]

Dower, ou il clame fraunctenement del feffement l'auncestre l'enfaunt sauncz mustrer fait, et le demaundaunt dit qe l'auncestre morust seisi.

Ranulphus de Singletone et Mabilla uxor eius [6] per attornatum suum petunt versus Johannem filium Alexandri de Kyrkeby et Ricardum de Lathum, custodem terre et heredis Nicholai le Botiller, terciam partem quatuor messuagiorum, sexaginta et decem acrarum terre, quatuor acrarum prati, quater viginti acrarum bosci, quinquaginta acrarum more et pasture, et sexaginta solidatorum redditus cum pertinenciis in Wryghtingtone ut dotem ipsius Mabille ex dotacione predicti Nicholai le Botiller primi viri sui.

Et Johannes et Ricardus per attornatum suum veniunt. Et

[1] *Add* et eadem matre *Vulg.*; et de eadem matre *B.* [2] The manuscript Year Books end the case at this point. [3] *Possibly* habeant. [4] When litigants compromise an action the chirograph of the fine is delivered to the serjeant who has obtained leave to make concord. In the present case that serjeant is Hedon. [5] *Vulg.* p. 11. Text from record, De Banco Roll, Mich., 2 Edw. II. (No. 173), r. 167, Lanc.). The manuscript Year Books give this record with fair correctness, but distort the proper names. [6] *Om.* eius *Rec.*

Thomas and Emma were asked by the justices whether Ralph was brother of Thomas (upon whose death the assize is brought) by the same father and mother. They say that Ralph was uterine brother of Thomas by the same father.[1]

Afterwards a day was given to the parties here on the quindene of St. Hilary [1309] at the prayer of the plaintiffs, saving to both parties their arguments. Afterwards a day was given to the parties here on the quindene of Easter, and the sheriff was ordered to cause the said assize to come at the said term etc. And at that day came the parties by their attorneys, and a day was given to them here on the morrow of St. John Baptist etc. saving to the parties [their arguments]. Afterwards on that day came the parties by their attorneys, and a day was given them on the quindene of St. Michael to hear their judgment, for that the judgment was not yet [ready]. And at that day came the parties, and by leave of the Court they make concord. And the said John of Cranesley gives one mark for leave to make concord. And let them have the chirograph by the hands of R. of Hedon their pleader etc.

4. SINGLETON *v.* KIRKBY.

A tenant in an action of dower, who is sued as guardian of the heir, as to part of the tenements says nothing, as to a second part pleads non-tenure, and as to a third part asserts that he holds not as guardian, but under a feoffment made by the husband. As to this third part issue is joined on the question whether the husband died seised.

Ranulph of Singleton and Mabel his wife by their attorney demand against John, son of Alexander of Kirkby, and Richard of Lathum, guardian of the land and heir of Nicholas le Botiller, a third part of four messuages, seventy acres of land, four acres of meadow, four score acres of wood, fifty acres of moor and pasture, and sixty shillings' worth of rent with the appurtenances in Wrightington as the dower whereof Mabel was endowed by Nicholas le Botiller, her first husband. And John and Richard come. And John says that he

[1] What follows is not in the Year Book. It illustrates the unwillingness of the Court to decide a point of law.

Johannes dicit quod ipse nichil tenet de predictis tenementis unde etc. Et predictus Ricardus quoad predictum boscum dicit quod ipse non tenet nisi viginti et quinque acras bosci tantum nec tenuit die impetracionis brevis etc., scilicet primo die Martii anno regni domini Regis nunc primo, et de hoc ponit se super patriam. Et Ranulphus et Mabilla similiter. Et idem Ricardus, quoad quinquaginta et sex acras terre et quatuor acras prati de predictis tenementis, dicit quod non debet eis inde ad hoc breve respondere, quia dicit quod ipse tenet tenementa illa ut liberum tenementum suum et non ut custos predicti heredis. Dicit enim quod predictus Nicholaus pater predicti heredis diu ante mortem suum feoffavit inde ipsum Ricardum et in seisinam posuit, et petit iudicium.

Et Ranulphus et Mabilla dicunt quod predictus Nicholaus obiit seisitus de predictis quinquaginta et sex acris [1] terre et quatuor acris prati cum pertinenciis in dominico suo ut de feodo, post cuius mortem predictus Ricardus illas seisivit ut custos ipsius heredis, et hoc parati sunt verificare per patriam etc. Et Ricardus dicit quod predictus Nicholaus pater etc. non obiit seisitus de predictis quinquaginta et sex acris terre et quatuor acris prati in dominico suo ut de feodo. Et de hoc ponit se super patriam. Et Ranulphus et Mabilla similiter.

Et idem Ricardus, quoad residuum predictorum tenementorum unde predicti Ranulphus et Mabilla petunt dotem etc., nichil dicit quare iidem Ranulphus et Mabilla dotem ipsius Mabille habere non debeant. Ideo consideratum est quod iidem Ranulphus et Mabilla recuperent inde seisinam suam, et Ricardus in misericordia. Et quia testatum est hic quod predictus Nicholaus quondam vir etc. obiit seisitus de predictis tenementis ut de feodo, preceptum est vicecomiti quod inquirat de dampnis etc., et qualiter etc. scire faciat ad prefatum terminum.[2]

5. OXBOROUGH (PARSON OF) *v.* HUMPHREY.[3]

Juré de utrum, ou piert qe receite de fealté barre; et si homme vouche et jeo pusse averer q'il est le primer qe se abate après la mort moun predecessour il serra osté de voucher.

Jurata de utrum, ou le bref fut porté vers plusours par diverses

[1] quinquaginta acris et sexaginta acris *A*. [2] The Year Books omit this paragraph. On the roll follows a *venire facias* for jurors on Hilary quindene.
[3] *Vulg.* p. 11. Text from the record, De Banco Roll, Mich. 2 Edw. II. (No. 173) r. 351, Norf. The copies in the MS. Year Books are far from perfection.

holds none of the said tenements. And Richard, as regards the wood, says that he holds and held on the day of the purchase of the writ, to wit, on the first day of March in the first year [1308] of the now King, only five-and-twenty acres of wood, and of this he puts himself upon the country. And Ranulph and Mabel do the like. And Richard as regards fifty-six acres of land and four acres of meadow, part of the said tenements, says that he ought not to answer them [the demandants] upon this writ, for he says that he holds the said tenements as his freehold and not as guardian of the said heir. For he says that the said Nicholas, father of the said heir, long before his death enfeoffed the said Richard; and of this Richard puts himself upon the country, and he craves judgment.

And the said Ranulph and Mabel say that Nicholas died seised in his demesne as of fee of the said fifty-six acres of land and four acres of meadow with the appurtenances, and that upon his death Richard seized them as guardian of the heir, and this they are ready to aver by the country.

And Richard says that the said Nicholas, the father etc., did not die seised in his demesne as of fee of the said fifty-six acres of land and four acres of meadow. And of this he puts himself upon the country. And Ranulph and Mabel do the like.

And Richard, as regards the residue of the tenements, whereof Ranulph and Mabel demand dower, says nothing why they should not have dower. Therefore it is considered that Ranulph and Mabel recover their seisin thereof, and that Richard be in mercy. And for that it is here testified that Nicholas, late husband etc., died seised of the said tenements as of fee, the sheriff is commanded to inquire touching damages[1] and to cause the court to know how [he has executed this command] at the term aforesaid.

5. OXBOROUGH (PARSON OF) *v.* HUMPHREY.

A parson brings one jury *utrum* against divers tenants for divers parcels. One of them abates the writ as regards himself by a plea of joint tenure. Another pleads that the demandant is seised of fealty and service from the land demanded. *Semble* this is a good plea:

[1] As to the damages, see Stat. Mert. (20 Hen. III.) c. 1.

WITHDRAWN

precipes: ou le bref s'abatist vers un, hoc non obstante les autres resp[ondirent] pur ceo q'il avoit diverses precipe et sour chescum l'em counta [1] une counte quia quodlibet est breve per se.[2]

Jurata venit recognitura utrum duo mesuagia, quatuor acre terre et dimidia, et medietas unius mesuagii cum pertinenciis etc. in Oxeburghe et Shengham sint libera elemosina pertinens ad ecclesiam Sancti Johannis Ewangeliste Oxeburghe unde Adam persona etc. est persona an laycum feodum Roberti Humfrey, Alicie Wyne, Alani le Mareschal, Edmundi le Sutere, Henrici Pyntel de Shengham et Ricardi Blaunche etc., qui quidem Robertus duo mesuagia et duas acras terre, predicta Alicia tres rodas terre et medietatem unius mesuagii, predictus Alanus unam rodam terre et predictus Edmundus medietatem unius acre terre, predictus Henricus medietatem unius acre terre et predictus Ricardus medietatem unius acre terre inde tenent. Et unde predictus Adam dicit quod quidam Henricus de Hastingges, quondam persona, predecessor etc., fuit seisitus ut de feodo et iure ecclesie sue predicte, tempore pacis, tempore domini Edwardi Regis patris domini Regis nunc etc. Et modo venit predictus Adam persona etc., et similiter predicti Robertus, Alicia, et Ricardus.

Et predictus Robertus dicit, quoad predicta tenementa que ipse tenet etc., quod predictus Adam persona etc. nichil clamare potest de tenementis illis versus ipsum. Dicit enim quod idem Adam seisitus est de fidelitate et servicio exeunte de predictis tenementis, scilicet de duabus solidatis redditus per annum, et petit iudicium etc., et si compertum fuerit quod non sit seisitus etc., dicit quod tenementa illa sunt laicum feodum ipsius Roberti et non libera elemosina predicte ecclesie etc., et de hoc ponit se super iuratam etc. Et Adam similiter. Ideo capiatur iurata etc., set ponitur in respectum usque a die Pasche in tres septimanas pro defectu iuratorum etc. Ideo vicecomes habeat corpora etc.

Et Ricardus, quoad tenementa que ipse tenet, dicit quod ipse tenet tenementa illa coniunctim cum quadam Basilia filia Johannis uxoris eius, que non nominatur etc., et petit iudicium de brevi etc., per quamdam cartam quam profert et que hoc testatur etc. Et Adam non potest hoc dedicere. Ideo predictus Ricardus inde sine die, et predictus Adam nichil capiat per breve suum quoad hoc, set sit in misericordia etc.

Et predicta Alicia, de tenementis que illa tenet, vocat ad warantum quasdam Sabinam et Aliciam, consanguineas et heredes Rogeri filii

[1] countra *D*. [2] Second note from *B*, *D*.

but the tenant adds a denial of the demandant's title. A third vouches, and the demandant counterpleads the voucher. Against others the jury is taken by default.

A jury comes to find whether (*utrum*) two messuages, four acres and a half of land and a moiety of a messuage with the appurtenances in Oxborough and Shingham are free alms belonging to the church of St. John the Evangelist of Oxborough, whereof Adam Parson etc. is parson, or the lay fee of Robert Humphrey, Alice Wyne, Alan the Marshal, Edmund the Tailor, Henry Pyntel of Shingham, and Richard Blaunche etc., whereof Robert holds two messuages and two acres of land, Alice three roods of land and a moiety of a messuage, Alan one rood of land, Edmund a moiety of one acre of land, Henry a moiety of one acre of land, and Richard a moiety of one acre of land. And concerning this matter the said Adam says that one Henry of Hastings his predecessor, sometime parson etc., was seised as of fee and in right of his said church, in time of peace, in the time of the lord King Edward, father of the King that now is etc. And now comes the said Adam the parson, and likewise the said Robert, Alice, and Richard.

And Robert, concerning the tenements that he holds, says that Adam the parson can claim nothing in them against him; for he says that Adam is seised of the fealty and service issuing from the said tenements, to wit, of two shillings' worth of rent a year; and he prays judgment; and, if it be found that he [Adam] is not seised etc. he [Robert] says that the tenements are his lay fee and not the free alms of the said church; and of this he puts himself upon the jury. And Adam [the parson] does the like. Therefore let [the verdict of] the jury be taken; but it is put in respite for default [of jurors] until three weeks after Easter [1309]. Therefore let the sheriff have the bodies [of the jurors] etc.

And Richard, as regards the tenements that he holds, says that he holds them along with his wife Basilia, daughter of John, who is not named in the writ; and he prays judgment of the writ; and he produces a charter which witnesses this. And Adam cannot deny this. Therefore let the said Richard go without day, and so far as this matter is concerned let the said Adam take nothing by his writ, but be in mercy.

And the said Alice, as regards the tenements which she holds, vouches to warranty Sabina and Alice, cousins and heirs of Roger,

Bartholomei de Oxeburghe sum[monendas] in eodem comitatu per cartam predicti Rogeri quam profert, et que testatur quod idem Rogerus dedit predicta tenementa et obligavit se et heredes suos ad warantiam etc. Et Adam dicit quod predicta Alicia ad predictum vocare ad warantiam admitti non debet etc. Dicit enim quod predicta Alicia recenter post mortem predicti Henrici predecessoris etc. intrusit se in tenementis illis etc., ita quod nec predicte Sabina et Alicia consanguinee etc. nec aliquis ipsarum antecessor fuit umquam seisitus de tenementis illis post mortem predicti Henrici predecessoris etc.[1] per quod illa alicui dare potuerunt seu obligare se ad warantiam etc. Et hoc petit quod inquiratur per iuratam. Et Alicia similiter. Ideo capiatur iurata etc., set ponitur in respectum usque ad prefatum terminum etc. pro defectu iuratorum quia nullus venit. Ideo vicecomes habeat corpora etc.

Et predicti Adam[2] le Mareschal et alii non veniunt. Et habuerunt diem hic ad hunc diem postquam comparuerunt in curia, scilicet a die S. Trinitatis in xv. dies postquam sum[moniti] etc., ad quem diem predicta iurata posita fuit in respectum etc. Ideo capiatur predicta iurata versus eos per defaltam etc., set ponitur in respectum usque[3] ad prefatum terminum pro defectu iuratorum etc. Ideo vicecomes habeat corpora etc.

Postea a die S. Trinitatis in xv. dies anno Regis nunc quarto venit predicta persona hic, et similiter Robertus et Alicia per attornatum suum. Et alii[4] non venerunt, set capiatur iurata versus eos per defaltam. Et iuratores veniunt de consensu parcium presencium electi, qui dicunt super sacramentum suum quod predictus Adam non est seisitus de fidelitate predicti Roberti. Dicunt eciam quod tenementa versus ipsum Robertum petita, et eciam tenementa versus predictos Alanum le Mareschal, Edmundum et Henricum petita, sunt libera elemosina pertinens ad ecclesiam predictam. Ideo consideratum est quod predictus Adam persona recuperet versus eos seisinam suam de predictis tenementis per visum recognitorum, et Robertus et alii in misericordia. Dicunt eciam quod predicta Alicia non intrusit se in tenementa versus ipsam petita, immo intravit per feoffamentum predicti Rogeri filii Bartholomei. Ideo predictum vocare ad warantiam stet in suo robore etc. Et sum[moneantur] quod sint hic in crastino S. Martini etc. Et vicecomes habeat hic ad prefatum terminum corpora iuratorum etc.

[1] The MSS. of the Y.BB. give no more of this paragraph. [2] So in the record; but apparently it should be *Alanus*. [3] The MSS. of the Y.BB. give no more of this case. [4] alia *Rec.*

son of Bartholomew of Oxborough, to be summoned in the same county, by a charter of the said Roger, which witnesses that the said Roger gave the said tenements and bound himself and his heirs to warranty. And Adam says that Alice ought not to be admitted to this voucher; for he says that Alice straightway after the death of the said Henry his predecessor intruded herself into the tenements so that neither Sabina and Alice, cousins etc., nor any of their ancestors were ever seised of those tenements after the death of his predecessor Henry, in such wise that they could make a gift thereof to anyone or oblige themselves to warranty. And he prays that this be inquired. And Alice does the like. Therefore let the [verdict of the] jury be taken; but it is put in respite until the said term [Easter three weeks] for default of jurors, for none of them comes. Therefore let the sheriff have their bodies etc.

And the said Alan the Marshal and the others do not come. And they had a day here, to wit on this day after they had appeared, to wit, on the quindene of Trinity after being summoned etc., at which day the jury was put in respite. Therefore let the [verdict of the] jury be taken against them by default etc.; but it is put in respite until the said term [Easter three weeks] for default of jurors etc. Therefore let the sheriff have their bodies etc.

Afterwards, on the quindene of Trinity in the fourth year of the now King, came the said parson and likewise Robert and Alice by their attorney. And the others came not; but let the [verdict of the] jury be taken against them by default. And jurors, elected by the parties who are present, come; and they say upon their oath that the said Adam is not seised of the fealty of the said Robert. And they also say that the tenements demanded against Robert, and also the tenements demanded against Alan the Marshal, Edmund, and Henry are free alms belonging to the said church. Therefore it is awarded that the said Adam the parson recover against them his seisin of the said tenements by the view of the recognitors, and that Robert and the others be in mercy. And [the jurors] further say that the said Alice did not intrude herself into the tenements demanded against her, but entered by the feoffment of the said Roger, son of Bartholomew. Therefore let the said voucher to warranty stand in its full force etc. And let [the vouchees] be summoned to be here on the morrow of S. Martin etc. And let the sheriff have the bodies of the jurors here at the said term etc.

6. ANON.[1]

Quid iuris clamat, ou piert qe le heir le conisour après la mort soun pere serra chacé a prendre sa party de la fyn et de atourner al aultre, tut ne atourna il en la vie soun pere.

Un Johane[2] dona certeynz tenementz a ses[3] ij. fitz Pieres[4] et Charlis a terme de lour ij. vies. Johane devia. G.[5] com fitz[6] eyné entra etc., et graunta le dreit de la reversioun etc. a un Johan.[7] G. morust.[8] Johan suist bref[9] vers le dit P. de prendre[10] la partie de la fine, et vers[11] P. et Charles com vers ij. tenauntz a terme de vie a conustre quel dreit etc., qi[12] viendrent etc.[13]

Pass. P. vous dit qu'il ne deit nul partie de la fine resceyvere,[14] qar au temps de la date de cesti bref si fust il[15] seisi del fee et le demeyne[16] de mesme lez tenementz, et si est einz[17] com frere[18] et[19] heir G.[20] com en soun heritage, par quai etc. Et[21] Charles dit qu'il tient etc. a terme de sa vie joyntement ovesqe un Pieres, a qi le fee et la reversioun est. Jugement si a[22] autre qe a luy deit attourner.[23]

Toud. descloa[24] tot le cas *ut supra*, et demaunda jugement depuis que par my la conissaunce G. se demist, qi[25] heir de[26] saunc P. estoyt,[27] s'il ne deyve bien agreer estre partie com heir G. et sa partie prendre, et si P. et C. qe reins n'ount forqe terme,[28] qe[29] a P. fee ne dreit put[30] descendre par la mort soun friere, qe del fee et del dreit se demist. Jugement s'il ne deyvent[31] attourner.[32]

Pass. Le fee se vest[33] par attournement, qe[34] nous ne faimes[35] unques devaunt.[36] Donqe[37] del hour qu'il ne se vesti unqes en J. il demort[38] en G.

Herle. Ceo qe G. graunta a autri[39] ceo en[40] luy ne demorra my, et desicome il graunta la reversioun a J. etc., jugement etc.

[1] *Vulg.* p. 11. Text from *A*: compared with *B*, *D*, *P*. [2] Un Jon, *B*, *Vulg.*; Un Johan *D*, *P*, *and so below*. [3] ces *A* [4] Perus *P*. [5] Geffray *P*. [6] *Om.* fitz *Vulg*. [7] Johane *A*. [8] *Om.* G. morust. *Vulg.*, *B*. [9] siwit le quid iuris clamat *Vulg.*, *B*, *D*. [10] et graunta le dreit de la reversion etc. a un J. qe siwit le quid iuris clamat vers Peres et Charles, et soi aturnerent, par quel la conisaunce etc. Puis le conise sywyt bref vers P. cum vers heir G. a prendre *P*. [11] *Om.* vers *B*, *D*. [12] qil *A*. [13] *Om.* qi viendrent etc. *Vulg*. [14] restreinera *Vulg. B*. [15] fut mesme cesti P. *P*. [16] *Om.* le demeyne *D*, *P*. [17] et ore est *P*. [18] fuiz *Vulg.*; fuitz *D*. [19] *Om.* frere et *P*. [20] *Ins.* et einz *P*. [21] *Om.* et *A*. [22] *Om.* a *A*. [23] retourner *A*. [24] desclosa *P*. [25] qe *A*. [26] dun *Vulg.*; du *B*, *P*. [27] est *P*. [28] forsque termer *Vulg*. [29] *Om.* qe *D*; qe rien nount forsque a terme de vie et *P*. [30] ne deit *D*, *P*. [31] deive *D*. [32] se demist par soun graunt demene en court qe porte record, jugement etc. depuis qe eux mesmes atournerent a nous *P*. [33] vesti *P*. [34] qar *A*. [35] feismes *B*; feymes *D*, *P*. [36] *Ins.* dount *A*. [37] et *P*. [38] demura *P*. [39] autre *B*, *D*, *P*. [40] *Om.* en *D*.

6. ANON.

Two brothers are tenants for life; the reversion is in their eldest brother. He levies a fine and dies. The conusee brings a *quid iuris clamat* against the two brothers, and a writ against the elder of the two to make him receive his part of the chirograph: and this is good.[1]

One Joan gave certain tenements to her two sons, Peter and Charles, for the term of their two lives. Joan died. Geoffrey as eldest son entered etc., and granted the right of the reversion to one John.[2] Geoffrey died. John sued a writ against Peter, calling upon him to take his 'part' of the fine, and against Peter and Charles as against two tenants for term of life, calling upon them to confess by what right etc. [*quid iuris clamant*].[3]

Passeley. Peter tells you that he ought not to receive any 'part' of the fine, for at the time of the date of this writ he was seised of the fee and demesne of these same tenements, and he is in as heir of Geoffrey as in his heritage; wherefore etc. And Charles says that he holds etc. for the term of his life jointly with one Peter, to whom the fee and the reversion belong; and he prays judgment whether he ought to attorn to anyone but [Peter].

Toudeby disclosed the whole case as above, and demanded judgment, since by the conusance Geoffrey, whose heir in blood Peter was, had demitted himself, whether [Peter] ought not to agree to be party [to the fine] as heir of Geoffrey and to take his 'part.' Also he demanded judgment whether Peter and Charles, who have nothing but for term of life, ought not to attorn, since no fee nor right could descend to Peter on the death of his brother who had demitted himself from fee and right.

Passeley. The fee vests itself by attornment, and that we have never yet made; therefore, since the fee never vested itself in John, it remained in Geoffrey.

Herle. What Geoffrey granted to another did not remain in him; and since he granted the reversion to John etc. we pray judgment etc.

[1] Headnote translated from Maynard's Table (under *Attornment*). Record not found.

[2] The grant must have been made in court in the course of proceedings which were to end in a fine. Then, before those proceedings were perfected by the delivery of the indenture of fine, the grantor died, leaving as his heir one of the tenants for life. The grantee desires that the fine shall be completed.

[3] In one MS. the tenants for life are supposed to have already attorned to the grantee of the reversion.

Friss. Fee et dreit qe ne sount mye mainables [1] ne se vestent unqes mès par [2] attournement, et desicome etc.

Et postea etc. P. et C. attournerent. P. cepit partem suam finis.

Stauntone. Vous avetz fait bien, qar vous avetz fait de gree ceo qe ley vous ust chacé.[3]

7. ANON.[4]

Nota quel cas homme purra aliener sauncz congé le seignour et quel noun.

Si jeo ay comune par especiaulté et jeo lees [5] a un aultre a terme ou a ma volunté, si celuy seit destourbé par le seignour del soil, jeo averai moun recoverir par assise com si jeo fusse mesme de comune [6] tenaunt. Mès celuy qe claym comune par especiaulté ne put la [7] comune vendre saunz congé le seignour. Ensement de lyveresoun, corodi et aultre profit etc.

8. ANON.[8]

Dower, ou piert qe si la defaute seit malement entré et bref issu, tut seit il retourné, il sera agardé cum nient retourné et le rowle amendé et *sicud alias* agardé.

En un bref de dower le tenaunt fist defaute, par quei le *cape* issit sur aultre qe sur le tenaunt [9] en le bref. Le 'tourné vint qe dit qe la defaute fust malement entré, par quai la mesprisoun fut amendé par le bref original. Par quai fut agardé qe le *cape* fust nul et qe le vicounte n'avoit nul bref retourné.[10] Ideo *sicut alias*, et [11] l'enroullement en la premere defaute fut entré et fust amendé par le original etc.

9. DUNSTABLE *v.* HORTON.[12]

Ael, ou piert qe si tenaunt a terme de vie prie eyde il li covent mostrer le maniere de sa tenaunce.

William de Dunstabl [13] porta soun bref de ael vers Maude [14] qe fut la femme G. de Hortone etc.

[1] maignables ne menables *Vulg.*, *B*, *D*; mainables ne vewables *P.* [2] vestent jammes avant *P.* [3] *Add* a fayre etc. *P.* [4] *Vulg.* p. 12. Text from *A*: compared with *B*. [5] lesse *B*. [6] *Om.* de comune *B*, *Vulg.* [7] lei *Vulg.* [8] *Vulg.* p. 12. Text from *A*: compared with *B*. [9] sour heir *Vulg.* [10] le heir vint et dit qe le viscounte n'avoit nul bref retourne *B*, *Vulg. instead of the whole of the last sentence.* [11] en *B*, *Vulg.* [12] *Vulg.* p. 12. Text from *A*: compared with *B*, *D*, *P.* [13] Mountstapill' *P.* [14] Maude *Vulg.*; Margerie *A*, *D*, *P.*

Friskeney. Fee and right which cannot be seen or handled cannot vest themselves except by attornment; and since etc.

And afterwards Peter and Charles attorned, and Peter took his 'part' of the fine.

Stanton, J. You have done well; for you did spontaneously what the law would have driven you to do.

7. ANON.

Lease of right of common. Alienation of common in gross.

If I have common by specialty and I lease to another for a term or at will, then if my lessee be disturbed by the lord of the soil, I shall have my recovery by way of assize as though I myself were tenant of the common. But he who claims common by specialty cannot sell the [right of] common without the leave of the lord. So is it with a livery, a corrody and other profits etc.

8. ANON.

Correction of a mistake in the record. Writ issued against the wrong person.

In a writ of dower the tenant made default, and thereupon the *cape* issued against one who was not named as tenant in the writ. The attorney came and said that the default was wrongly entered, wherefore the mistake was corrected by the original writ, and it was adjudged that the *cape* was bad and that the sheriff had returned no writ. Therefore a *sicut alias* issued and the enrolment which had been entered of the first default was corrected by the original writ.

9. DUNSTABLE *v.* HORTON.[1]

The tenant in an action for land asserts that he is only tenant for life and prays aid. He is driven to disclose his title as tenant for life.

William of Dunstable brought his writ of ael against Maude, wife that was of G. of Horton.[2]

[1] Record not found. Proper names uncertain.

[2] The possessory action on the death of the demandant's grandfather is an action of ael. The assize of mort-dancestor does not extend to so remote a relationship.

Herle. Ele n'ad rien si noun a[1] terme de vie del heritage R. fitz et heir G. jadis soun baroun, a qui la revercioun appent, saunz qui ele ne put ceaux tenementz mener[2] en jugement, et prioms heyde de luy.

Friss. Coment a terme de vie, qe put estre en meynt maniere, ou en dower ou de lees ou de autre maniere, ou homme put voucher et n'avera mye heide, et *econtra.* Par quay si vous voletz estre heydé par ceo voye, decloez vostre estat.

Toud. Ne[3] pas mester, qar tut ust[4] jeo moun vouchier etc. jeo luy purra prier en heide en desheritaunce[5] de moy, qar vouchier doun a la valu et prier heide nemy. Dount del hour que jeo desclaim en le dreit,[6] jugement si nous ne devoms heyde avoir ou si mester seit qe nostre estat seit plus desclos.

Fress. Jeo vous moustrerai qu'il covent, qar jeo pose q'un parcener fut enpledé et voleit avoir heide de soun parcener, il covendreit sei feare privé a luy, coment ceaux[7] tenementz furent devenuz a eux par successioun de auncestre paramount. Et tenaunt par la ley d'Engletere en mesme la manere. Dount nous demaundoms jugement si saunt ceo qe vous descloez a la court[8] si vous devez[9] eide aver, qar a la court est a savoir si vous devez[10] heide avoir. (Et fut chacé par la court a moustrir coment ele[11] ad[12] terme de vie.)

Herle. Ceaux tenementz furent en aschun temps en la seisine Edmund Beof,[13] qe les dona a un G. et Maude et as heyres G., issint qe Maude n'ad qe fraunktenement et le fee et le dreit[14] en la persone R. fitz et heir G., saunz qi etc., et prioms heide de luy.

Friss. Qe G. et M. n'avoint unqes reins del doun E.,[15] prist etc. Et alii econtra.

10. GOLD *v.* BRUMPTON.[16]

Emprisounement, ou piert qe il covent al p[laintif] respoundre al fame q'est comune.

Un A. porta bref d'emprisounement vers un B.

Lauuf. Mesme celuy B. fut a cel[17] temps baillif de W. ou A. se

[1] *Om.* a *B D.* [2] *Om.* mener *Vulg., B.* [3] Nest *D*; Il nad *P.* [4] usse *D, P.* [5] desavauntage *P.* [6] *Ins.* et aferme le dreit en la persone celi etc. *P.* [7] ses *D.* [8] *Ins.* vostre estat *P.* [9] devietz *B.* [10] devietz *B.* [11] il *B*; ele *D, P.* [12] *Ins.* a *P.* [13] Boef *B*; de Benestede *P*; temps Esmon Boef *D.* [14] *Ins.* demoert *P.* [15] Edmound *P.* [16] *Vulg.* p. 12. Text from *A*: compared with *B, D, R.* [17] tiel *R.*

Herle. She has nothing except for term of life of the inheritance of R., son and heir of G., sometime her husband, to whom the reversion belongs and without whom she cannot bring these tenements into judgment. We demand judgment and pray aid of him.

Friskeney. How for term of life? That may be in many manners, as in dower or by lease, or in some other manner, in such wise that you could vouch and should not have aid [or that you should have aid but could not vouch.] Therefore if you would have aid you must disclose your estate.

Toudeby. There is no need of that; for, albeit I have a voucher, I can pray aid, though this may lead to my own disheritance; for by a voucher I secure a recompense in value, while I get none by an aid prayer. Therefore, since I have disclaimed in the right and have affirmed it to be in another person, we pray judgment whether we ought not to have aid and whether there be any need that our estate should be further disclosed.

Friskeney. I will show you that there is need, for I put the case that one parcener was impleaded and would have aid of his parcener: the one must make himself privy to the other, as by showing how the tenements came down to them from their ancestor. And so of a tenant by the curtesy. Therefore we demand judgment whether without disclosure you should have aid, since it is for the Court to know if you should have aid. (And she was driven by the Court to show how she was tenant for life.)

Herle. These tenements were aforetime in the seisin of Edmund of Benstead, who gave them to one G. and Maude and to the heirs of G., so that Maude has only freehold, and the fee and the right are in the person of R., son and heir of G., without whom [we cannot bring these tenements into judgment]; and we pray aid of him.

Friskeney. G. and M. never had anything by the gift of E. Ready etc.

Issue joined.

10. GOLD *v.* BRUMPTON.[1]

False imprisonment. Justification. Arrest by bailiff upon hue and cry. Replication *de iniuria.*

One A. brought a writ of imprisonment against B.

Laufer. This same B. was at that time bailiff of W., where A.

[1] Proper names from the record.

pleynt et[1] si batit une femme q'ele morust, par quai soun fitz leva freschement[2] la mené sur luy, par quai cesti com baillif arestut[3] soun corps tauncqe lendemeyn, et le coroner vient veer le aventure et prist[4] l'enqueste, par quel enqueste il fust trové coupable, et comune fame fut qu'il avoit[5] tué, et issint luy restut[6] il com bien luy lust.

Hedone. Qu'il ne fut unques de cel mort endité devaunt coroner ne de cel mort trové coupable, prest etc.

Staunton. Qe[7] r[espone]z vous a la comune fame qe doune[8] a baillif pouer d'enquere et[9] de attacher[10] par Statut de Wyntone?

Hedon. Qu'il luy prist[11] par sa malice et nient auxi com il ad dit, prest etc.

Et alii econtra.[12]

Extract from the Record.

De Banco Roll, Hilary, 2 Edw. II. (No. 174), r. 67d.

[Plea.]—Et Edmundus et Henricus per attornatum suum veniunt et defendunt vim et iniuriam quando etc. Et dicunt[13] quod predictus Johannes Golde predictis die et anno in predicta villa de Nova Wyndesore verberavit et maletractavit quandam Isabellam que fuit uxor Rogeri le Taillour, unde clamor et hutesium levatum fuit per totam villam predictam quod predictus Johannes ipsam Isabellam interfecerat, per quod iidem Edmundus et Henricus, qui fuerunt tunc temporis ballivi Regis ville predicte, ipsum Johannem ceperunt et arestaverunt usque in crastinum etc., ad quem crastinum idem Johannes de morte predicta indictatus fuit per inquisicionem inde factam etc., et postea per preceptum Regis captus et apud gaolam de Wyndesore ductus et ibidem in gaola detentus pro morte predicta, unde iidem Edmundus et Henricus dicunt quod ipsum Johannem in forma predicta arestaverunt prout ad ipsos pertinuit in hac parte absque iniuria seu transgressione aliqua eidem Johanni facienda etc.

[Replication.]—Et Johannes dicit quod predicti Edmundus et Henricus ipsum Johannem predictis die et anno de iniuria sua propria ibidem ceperunt et imprisonaverunt et in prisona detinuerunt per tempus predictum, et non ea occasione qua ipsi superius asserunt: et quod ita sit petit quod inquiratur per patriam.

[Joinder of issue.]—Et Edmundus et Henricus similiter.

[1] *Om.* et *A.* [2] par qey R son fitz et L son frere frechement leverent *R.* [3] garda *R.* [4] qe les coroners vindrent a mort et pristerent *R.* [5] *Ins.* cele *R.* [6] prist *R.* [7] Qei *D.* [8] downe *R.* [9] *Om.* et *A.* [10] *Ins.* et ceo avez *R.* [11] *Ins.* a tort et *R.* [12] *Add* et a cel averement fut il chace par agarde *R.* *Not in A, B, D.* [13] dicit *Rec.*

complains [that the wrong was done], and A. beat a woman so that she died; wherefore her son freshly levied the hue upon him, and [the defendant] as bailiff arrested his body until the next day, and the coroner came to see what had happened, and A. was found guilty, and the common fame was that he had killed her, and therefore B. arrested him, as well he might.

Hedon. He never was indicted before the coroner nor found guilty of this death. Ready etc.

Stanton, J. What do you answer to the common fame which by the Statute of Winchester gives the bailiff power to inquire and attach?[1]

Hedon. He took him of malice and not as he has said. Ready etc.

Issue joined.

Note from the Record.

Edmund of Brumpton and Henry 'le Ledeyetere' were attached to answer John Golde of New Windsor in a plea of assault and imprisonment. According to the count, the act was done at New Windsor on the Monday next after the feast [22 Feb.] of St. Peter's Chair in 28 Edw. I. [A.D. 1300]; the damages are laid at 40*l.*

The plea states that the plaintiff beat and maltreated Isabella, widow of Roger the Tailor, so that hue and cry were raised throughout the town to the effect that he had killed her, wherefore the defendants, who were then the King's bailiffs of the said town, took the plaintiff and arrested him until the morrow, and on the morrow he was indicted by an inquest and afterwards was taken by the King's command and led to the gaol at Windsor and there detained for the said death; and so the defendants say that they arrested him in the form aforesaid as behoved them in this behalf without doing any injury or trespass to him.

The replication is a regular replication *de iniuria sua propria.* Issue was joined. A *venire facias* was awarded for the quindene of Trinity. No further proceedings have been found. The endeavour of the plaintiff's counsel to plead that he was never indicted and found guilty leaves, as might be expected, no mark on the roll.

[1] Stat. Winton., 13 Edw. I. The words that are most directly in point seem to be those (cap. 4) which direct the bailiffs of towns to make inquest concerning persons suspected of being against the peace (dunt suspiciun seit qil soient gent countre la pes).

11. ANON.[1]

Dower, ou piert qe de resonables estovers femme avera en alowance et ne mye dower.

Une femme porta bref de dower et demaunda resonable estovers, scilicet,[2] housbote et haybote[3] appendaunt a soun fraunctenement qe fut a soun barroun[4] en N.

Migg.[5] Si vostre baroun ust esté deforcé del entier[6] ou le heir de ij. parties, il ne ust pas eu[7] le *precipe quod reddat.* Jugement de cesti bref.

Malm.[8] Nostre baroun fut seisi et nous ne poums autre bref avoir.

Ber. Teil manere de profites[9] ne pount mye estre departies, qar si teil heritage descent a plusours heirs un avera le profitz entier et les aultres seurs en allowaunce. Et auxint femme en dower. Par quei agarde etc. qe ele ne pringe rien etc.

{*Hyngeham.*[10] Si vous devet avoir un renable estover et le heir un estover a son mies,[11] si averez vous taunt com vostre baron avoit et le heir ataunt. Dount[12] ceuz profitz ne put estre departiz, com quiler neys en autri bois ou[13] forestarie ou[14] fee un chambleyn,[15] qar si tiel profit fut descendu a plusours heirs un avera le profit ent[erement] et les autres averont alowance des autres choses, kar si[16] chescun eyt renable estover tut le boys le seignour par cas serreit destrut.}

12. STAPELDON *v.* STAPELDON.[17]

Garde, ou piert qe feffement de servicez chaunge mye seignourye : ou piert qe la femme purra pleder l'estat soun baroun a oster l'autre de la garde, et le p[leintif] pleda l'estat le conisour.

Mestre Waulter de Stabuldone porta soun bref de garde vers Thomas de G., qe voucha a garraunt Margarete qe fust la femme

[1] Not in *Vulg.* or *B.* Text from *A* : compared with *D*, *P*, *R*. [2] la terce partie dune renable estover de *R*. [3] *Ins.* de tiels boys *R*; en cel boys *P*. [4] *Om.* qe . . . baroun *R*. [5] Midd. *R*. [6] de ceu profit *R*, *P*. [7] il navereyt mye *R*. [8] Stant. *R*; Ston. *P*. [9] Her'. Si vous devetz avoir resnables estovers etc. mais tiele manere de profuitz *D*. [10] In *R*, *P*, this speech takes the place of that ascribed to Bereford; but in *R* it becomes two speeches, the one by 'Ing.', the other by 'Hengham.' [11] sa mesoun *P*. [12] mes *P*. [13] en *R*. [14] en *R*. [15] *Om.* com . . . chambleyn *P*. [16] fut descendu a v. parceners chescun navereit pas tiel profit. Hengham : Eyt un parcener le profit enterement et eynt les autres alowance. Auxi de la femme, qar si *P*. [17] *Vulg.* p. 12. Text from *A* : compared with *B*, *D*, *P*.

11. ANON.

No dower of reasonable estovers : but an allowance in respect thereof to be made to the doweress.

A woman brought a writ of dower and demanded the third part of a reasonable estover, to wit, housebote and haybote appendant to her free tenement which belonged to her husband in N.

Migg. If your husband had been deforced of the whole, or his heir had been deforced of the two parts, he would not have had a *praecipe quod reddat.* Judgment of this writ.

Malberthorpe. Our husband was seised and we can have no other writ.

Bereford, J. Such manner of profits cannot be partitioned; for, if such an inheritance descends to divers heirs, one of them shall have the profits integrally and the other sisters something in allowance. And so of a woman in her dower. Therefore [this Court] awards that she take nothing.

{Hengham, C. J.[1] If you are to have a reasonable estover and the heir is to have an estover for his house, you will have as much as your husband had and the heir also will have as much. There can be no partition of such profits as that of collecting nuts or of a forester's office or the fee of a chamberlain, for if such a profit descends to divers heirs one of them shall have the whole profit and the others an allowance; for, if each of them were to have a reasonable estover, perchance the lord's whole wood would be destroyed.}

12. STAPELDON *v.* STAPELDON.[2]

The preferential right to the wardship of an heir's body that belongs to one of several lords by virtue of priority of feoffment will be enjoyed by a person to whom that lord has granted the services of the tenant. It will be enjoyed by that lord's widow if those services form part of her dower. Stat. Westm. II. (13 Edw. I.) c. 16 discussed.

Master Walter of Stapeldon brought his writ of wardship against Thomas of Stapeldon, who vouched to warranty Margaret, wife that

[1] This is an alternative for Bereford's speech.

[2] This case is Fitz., *Garde*, 2. Proper names from the record.

Joce[1] de Deneham.[2] Vers qui Mestre Waulter counta qe a tort par sa garrauntie li deforce Johan le fitz[3] David de Potyngtone,[4] qui gard a luy apent par la resoun qe David peir Johan, qi heir etc., teint[5] de luy un mees par homage et feaulté et par les services de un demy fee de chyvaler[6] etc., de queux services etc.[7] par my la mayn David[8] etc., et morrust en[9] soun homage, et issint appent a luy la garde.[10]

Herle. La garde appent a T. a qi ele ad garranti, par la resoun qe David peir Johan teint[11] de Joce jadiz baroun M. par service de chyvaler, après qui mort nostre seignour le Roi entera[12] en toutz les terrez le dit Joce par le nounage Johan filz et heir Joce, purceo qu'il tint[13] de luy[14] en chief, issint qe a cest Margerete furent assignez lez services le dit David hors de la Chauncelerie ensemblement ovesqe autrez tenementz en alouaunce de tut soun dower, par quel assignement David se tourna[15] a M., le quel David tynt[16] par eyné feffement de lez auncestres Joce baroun M. qe de Mestre Waulter.[17] Issint appent a luy par priorité.

Friss. Ceo ne poetz dire, qar David piere Johan tient[18] en ascun temps de un Richard et Johane sa femme[19] par servicez de chyvaler, les queux Richard et Johane graunterent lez servicez David par fine levé en la court le Roy[20] a Mestre Waulter, par quele graunt David se tourna[21] a W., et David et ses[22] auncestres tendereint de eyné feffement de les auncestres Johan[23] nostre conyssour, qui estat nous avoms, qe des auncestres Joce barroun M.[24]

Herle. Ore demaundoms jugement del hourre qe vous avetz[25] conu qe vous estes estraunge purchaçour de cest seignourye, et[26] vous ne poetz dire[27] qe David estoit plustost feffé de vos auncestres qe des[28] auncestres Joce nostre baroun,[29] si a nul averment en affermaunt priorité de feffement en la persone celuy a qi vous estes estraunge du saunc devetz[30] avenir.

Berr. Si David et ses[31] auncestres furent plustost feffez de les auncestres Johan,[32] qui estat Mestre Waulter ad, qe des auncestres

[1] Jon. *Vulg.* [2] *Ins.* qe entra en la garauntie *P.* [3] *Ins.* et heir *P.* [4] Podyngtone *B*, *D.* [5] tynt *D*; tint *P.* [6] *Ins.* et par escuage scil. xx. s. al escuage qaunt lescu court *P.* [7] il fut seisi *P.* [8] *Ins.* cum par mi la meyn *P.* [9] on *A.* [10] *Add* par la reson del nounage celi J., et M. la deforce a tort etc. *P.* [11] tent *D*; tint *P.* [12] entra *Vulg.*, *B*, *D.* [13] tent *D.* [14] tint du Roi *P.* [15] sattourna *Vulg.*, *B*, *P.* [16] tent *D.* [17] *Ins.* et *P.* [18] tynt *D.* [19] *Ins.* cum del dreit Jone *P.* [20] *Om.* le Roy *D*, *P.* [21] sattourna *Vulg.*, *B*, *P.* [22] ces *A.* [23] Jone *Vulg.*, *B*; Johane *P.* [24] *A word like* pricaterz *in A*: *or* precacerz *in D*; etc. *Vulg. B.* [25] avietz *B.* [26] Begin Herle's speech here, *P.* [27] dedire *Vulg.*; dire *changed into* dedire *B*; dire *A*, *D*, *P.* [28] qe David et cez auncestres tindrent de vous et de vos auncestres pluis tost qe de les *P.* [29] feffe de les auncestres Joce nostre baroun etc. *B.* *Ins.* jugement *P.* [30] devietz *B.* [31] ces *A.* [32] Jone *Vulg.*, *B.*

was of Joce of Dynham, who entered into the warranty. And Master Walter counted against her that wrongfully by her warranty she deforces from him John, the son and heir of Robert[1] Pudding, whose wardship belongs to him, for that Robert the father of John, whose heir [John is], held of him a messuage by homage and fealty and the service of half a knight's fee etc., of which services [he was seised] by the hand of Robert, and [Robert] died in his homage, and so the wardship belongs to him.

Herle. The wardship belongs to Thomas, to whom [Margaret] has warranted, for that Robert father of John held of Joce, sometime her husband, by knight's service, upon whose death our lord the king entered into all the lands of the said Joce because of the nonage of John, son and heir of Joce, who held of the King in chief, so that the services of the said Robert were assigned to the said Margaret out of the Chancery together with other tenements in allowance of her whole dower; and upon this assignment Robert attorned himself to Margaret; and as the said Robert held of the ancestors of Joce, Margaret's husband, by a feoffment older than that by which they held of Master Walter, so [the wardship] belongs to Margaret by virtue of priority [of feoffment].

Friskeney. That you cannot say, for Robert, father of John, at one time held of one Richard and Joan his wife by knight's service, which service Richard and Joan granted to Master Walter by a fine levied in the King's Court;[2] and upon that fine Robert attorned to Walter, and Robert and his ancestors held of the ancestors of Joan, our conusor, whose estate we have, by a feoffment older than that by which they held of the ancestors of Joce, Margaret's husband.

Herle. And now we demand judgment, since you have confessed that you are a strange purchaser[3] of this lordship, and you cannot say that Robert was enfeoffed by your ancestors before he was enfeoffed by the ancestors of Joce our husband. We demand judgment whether you can get to an averment affirming a priority of feoffment in the person of one to whom you are a stranger in blood.

Bereford, J. If Robert and his ancestors were enfeoffed by the ancestors of Joan, whose estate Master Walter has, before they were

[1] David in the French text.

[2] The replication on the record says nothing of fine or attornment. On the contrary it says that Richard and Joan enfeoffed Walter of a manor together with the homage and service of Robert.

[3] That is, 'a stranger in by purchase.'

Joce vostre baroun, n'entendetz mye qe Mestre Waulter avera la garde (*quasi diceret sic*) ?

Herle. Noun Sire, qar s'il vodra estre aidé ceo covendra estre par la comune ley ou par ley especial.[1] Par comune ley[2] nemye, qar si un tenaunt tient[3] de deux seignours celuy qe[4] happa le corps[5] avera[6] la garde saunt ceo qe l'autre averoyt soun recoverir. Par la novelle ley[7] nyent, qar les paroulles del estatut si serrount mys en[8] certeyn, issint qe celuy de qui auncestres le tenaunt tient[9] par plus[10] auncien feffement a luy[11] appent la garde.

Berr.[12] R[esponez] outre, qar statut est autrement a entendre, scilicet, le quel qe l'estat[13] soit acru par[14] purchaz ou par aunc[estrie] etc.

Nota qe purchatz de seignourye ne chaunge my la priorité,[15] mès purchatz de tenaunce chaunge la seignourye[16] etc.

Note from the Record.

De Banco Roll, Hilary, 2 Edward II. (No. 174), r. 34d, Corn.

Thomas of Stapeldon was summoned to answer Master Walter of Stapeldon in a plea that he should render to him John, son and heir of Robert Puddinge, whose wardship belongs to Walter because Robert held his lands of Walter by military service. The count states that Robert held of Walter a messuage and a carucate of land in Ammaleglos by homage and fealty and the service of a fourth part of a knight's fee (to wit, ten shillings towards a scutage of forty shillings and so in proportion), of which homage, fealty, and service Walter was seised by the hand of Robert; and that Robert died seised of the tenements in the homage and service of Walter; and that therefore the said wardship belongs to Walter; and that Thomas deforces him to his damage, 100*l*.

It is then stated that Thomas had appeared and had vouched to warranty Margaret, wife that was of Joce of Dynham. She now comes by attorney and demands that the cause of the voucher be shown to her (et petit sibi ostendi per quod debeat ei warantizare).

Thereupon Thomas produces a writing under the name of Margaret which witnesses that she had granted and sold to Thomas the wardship and marriage of the heirs (*heredum*) of the said Robert, to hold to Thomas and his assigns until the full age of the said heirs; and that she bound herself

[1] ceo serra par aunciene ley ou par novele ley *P.* [2] par launciene *P.* [3] tent *D.* [4] *Ins.* primes *P.* [5] happa la garde du corps *Vulg.*, *B*; happa la garde le corps *D*; happe le corps *P.* [6] averoit *D.* [7] *Om.* ley *D.* [8] de statut sount en *P.* [9] tent *D.* [10] celi tenant qe tint des auncestres de pluis *P.* [11] a celi seignour *P.* [12] Herle *D.* [13] etc., *not* qe l'estat, *Vulg.*, *B*; le quel lestat *D.* [14] pur *A.* [15] *Ins.* de tenaunce *B*; chaunge my la tenance *D.* [16] priorite *substituted for* de seigneurie *deleted*, *B*. *In P*: Nota alienacion de seignourie ne chaunge pas priorite de feffement.

enfeoffed by the ancestors of Joce your husband, do not you think that Master Walter shall have the wardship? (He implied that this would be so.)

Herle. No, Sir, for if they would have help of the law they must rely on common law or special law.[1] And common law will not help them, for if a tenant holds of two lords he who can snap up the body of the heir shall have the wardship and the other shall have no recovery. And the new law will not help them, for the words of the Statute[2] must be taken in their certainty, so that the wardship belongs to him of whose 'ancestors' the tenant holds by the more ancient feoffment.

Bereford, J. Answer over; for the Statute is to be understood otherwise: namely, whether the estate has accrued by purchase or by ancestry [it carries with it the wardship if it is the estate from which the earlier feoffment proceeded.]

Note that purchase of the lordship does not change the priority, but purchase of the tenancy changes the lordship[3] etc.

Note from the Record (*continued*).

and her heirs to warrant, acquit, and defend to Thomas the said wardship and marriage, with all escheats and other appurtenances.

Then Margaret confesses the writing to be hers, and enters into warranty, and (having defended tort and force) says that by reason of the said sale the wardship belongs to Thomas and not to Master Walter; for she says that Robert Puddynge, the heir's father, held of her late husband, Joce, a messuage and a carucate of land in Treneglos by homage and fealty and the service of half a knight's fee of the fee of Mortain (to wit, one mark towards a scutage of forty shillings, and so in proportion[4]), of which homage, fealty, and service Joce was seised by the hand of Robert, and thereof died seised.

Margaret's plea proceeds to say that, after the death of Joce, King Edward, father of the now King, seised into his hand the lands and tenements whereof Joce died seised, because Joce held of the King in chief, and afterwards assigned the manor of Dunegheny, together with the homage and service of Robert, to Margaret to hold by way of dower; and that, by virtue (*pretextu*) of this assignment, Robert attorned himself to Margaret for his fealty and service, and died in the service of Margaret; and that Robert and his ancestors held the said tenements in Treneglos of Joce and his ancestors by military service before they held the tenements in Ammal-

[1] Or 'on the old law or the new law.'

[2] Stat. Westm. II. (13 Edw. I.) c. 16: 'ille dominus habeat maritagium de quo antecessor suus [=antecessor tenentis] prius fuit feoffatus.' See Coke's exposition, Sec. Inst. 391–3.

[3] Or 'changes the priority.'

[4] These 'little fees' of the honour of Mortain paid but two-thirds of the normal rate of scutage. See Madox, Exchequer, i. 649.

Note from the Record (*continued*).

eglos of Master Walter and his ancestors; and of this she puts herself upon the country.

Master Walter replies that one Richard of Stapeldon and Joan his wife enfeoffed him (Walter) of the manor of Penkarrou, together with the homage and service of the said Robert; and that Robert's ancestors held the said tenements in Ammaleglos by military service of the said Joan and her ancestors before they held the said tenements in Treneglos by the like service of the said Joce and his ancestors; and he prays that this be inquired by the country.

Margaret joins issue. Upon this follows a *postea* telling how fifteen years later, in 17 Edw. II., a verdict was taken at Launceston by John de

13. SIMON *v.* WALSINGHAM.[1]

Entré ou le tenaunt dit q'il tient la terre en vileynage, et l'altre dit qe il fut tenaunt de fraunctenement, et receu.

De ingressu dum fuit infra etatem, ou le tenant dit q'il n'avoit ren etc. si non en villenage et demanda jugement du bref. L'autre fust receu d'averer q'il fust tenant de franctenement jour de bref etc. non obstante q'il desclama en le franctenement. S'il eust dit q'il fust le vylain un tiel le bref eust abaty etc.

Thomas Symound porta bref d'entré vers Roggier[2] de Walsingham[3] d'un mees qu'il[4] luy lessa taunq'il fust denz age.

Hunt. La ou il porta cest bref vers R. com vers tenaunt de fraunctenement, il n'ad[5] rien ne rien claime, mès il dit q'il tient les tenementz en villenage a la volunté l'Ercevesqe de Caunt[erburie], en qi persone le fraunctenement est.[6] Jugement du bref.

Willeby. Tenaunt de nostre demaunde[7] le jour du bref purchacé, prest etc.

Hunt. Del houre qe nous avoms affermé le fraunctenement en autri[8] persone et[9] desclamoms en les tenementz,[10] n'entendoms mye q'encountre nostre desclamer[11] par nul averement pussez fraunktenement en nostre persone affermer.[12]

Stant. Est Rogier le villeyn l'Ercevesqe ou noun?

Hunt. Nanil, mès il teint les tenementz[13] *ut supra.* (Et hoc non obstante il fut chacé a respoundre au bref.)

[1] *Vulg.* p. 13. Text from *A*: compared with *B*, *D*, *L*, *P*, *R*. [2] Robert *P*. [3] Wasing' *L*; Wasinham *P*. [4] *Ins.* meismes *B*, *L*. *Sim. D*, *P*. [5] il vous dit qil nad *R*, *L*. [6] demert *R*, *P*. [7] demene *R*. *Om. last three words D*. [8] autre *Vulg.*; autri *B*, *D*, *P*. [9] *Om.* et *A*; en le persone lercevesqe *R*. [10] en cele tenance *R*, *P*. [11] *Ins.* en court qe porte recorde *R*. [12] attacher *R*. [13] tient ceu mies a la volunte *R*.

Note from the Record (*continued*).

Stonore with John de Carmyno, knight, as his associate. The jurors say upon their oath that Robert Puddynge and his ancestors held the tenements in Ammaleglos by military service of the said Joan and her ancestors before they held the tenements in Treneglos by the same service of Joce and his ancestors. Therefore it is awarded that Master Walter recover his seisin of the wardship against Thomas, and that Thomas have a recompense in value from Margaret, and likewise that Walter recover against Margaret his damages, which are taxed by the jury at 40*l.* 'And for that Ralph Speke, the attorney of the said Master Walter, fully allows that the said heir was of full age before the taking of the said jury, therefore let there be a cesser of execution as to seisin of the wardship (cesset executio de seisina inde habenda).'

13. SIMON *v.* WALSINGHAM.[1]

In an action for land the tenant does not make an effectual disclaimer if he says that he holds the land in villeinage of another but will not say that he is that other's villein. The demandant denies the tenure in villeinage alleged by the tenant, and the parties plead to issue as to whether the tenant came to the land by a demise from the demandant.[2]

Thomas Simon brought a writ of entry against Roger of Walsingham for a messuage which [Thomas] himself while he was under age demised to Roger.[3]

Hunt. Whereas he brings this writ against Roger as against a tenant of the freehold, Roger has nothing and claims nothing, but says that he holds the tenements in villeinage at the will of the Archbishop of Canterbury, in whose person the freehold is. We demand judgment of the writ.

Willoughby. Tenant of our demand on the day of writ purchased. Ready etc.

Hunt. Since we have affirmed the freehold in the person of another and disclaim in the tenancy, we do not think that by any averment you can affirm the freehold in our person as against our disclaimer in a court that bears record.

Stanton, J. Is Roger the villein of the Archbishop: yes or no?

Hunt. No, but he holds the tenements as above. (And notwithstanding this, he was driven to answer to the writ.)

[1] Record not found. Proper names uncertain.

[2] Compare Y. B. 20–1 Edw. I., p. 41; Pollock and Maitland, Hist. Engl. Law, i. 408.

[3] In the writs of entry *demisit*, or (in French) *lessa*, is used in a very large sense: it will cover an alienation in fee.

Hunt. Mesme cesti T. veint certein jour en la court l'Ercevesqe et rendist[1] au baillif, qi tient la court, mesme cel mees com le villenage l'Ercevesqe et nous les resçums de[2] baillif a tenir[3] par villein services, et issint tenaunt[4] a la volunté l'Ercevesqe et nent[5] en[6] fraunctenement, prist etc.

Willeby.[7] Qu'il fust tenaunt etc. le jour etc.[8] et de nostre lees demesne et cel estat ad[9] continué,[10] prest etc.[11]

14. BRAUNEBY *v.* COKESALE.[12]

Quid iuris clamat, ou il clame solum le purport de un escrit, e fut chacé a clamer.

Quid iuris clamat, ou le tenaunt dit qe il ne doit pas attourner pur coe qe le conisour ne fust pas en court. Et pus il clama fee sulom la porport de un escrit, qe fust contrepledé.[13]

Rauf de Brauneby suyt le *quid iuris*[14] *clamat* vers J. de K.[15], qe vient en court et dit qe celuy qui graunta les tenementz après le terme passé ne fust pas en court en propre persone ne par atourné, par quei il ne deit a soun bref respoundre ne nul estat clamer.

Herle. Celuy qe conust n'est pas partie directe a cesti bref, qu'il nous graunta[16] par sa conisaunce[17] ces[18] tenementz après le terme passé,[19] par vertue de quel[20] conisaunce nous avoms suy cesti bref, par quei nous sumes partie a vous et nient le[21] conisour.

Toud. Jeo pose qe le conisour nous ust[22] enfeffé par chartre et nous tendisoms[23] metter[24] avaunt cele chartre, qi[25] serroyt partie a cel trier ?[26] Nent vous, et par consequent vous nent partie etc.[27]

Fristien.[28] Si vous voletz dire ceo, dites le, et donqes vendra il[29] en court et se fra partie a vous.

Toud. Ceo ne dioms nous,[30] mès si le conisour ne soit en court la fyn ne serra jammès engrossé.[31]

[1] rendi sus *R.* [2] du *R, D, P.* [3] *Om.* com. . . . tenir *B, Vulg.* [4] tient *Vulg.*; tent *B, D*; tint *P.* [5] *Om.* nent *Vulg.* [6] de *R.* [7] Malm. *B, D, Vulg.* [8] du bref purchace *R.* [9] *Om.* ad *A, D*; estat est *P.* [10] *Ins.* sanz remuement d'estat *R, P.* [11] *Add* et alii e contra *R, P.* [12] *Vulg.* p. 13. Text from *A*: compared with *B, D, P, R*; also with *X* (a brief abstract). [13] Second note from *B.* [14] iure *A.* [15] W. de Cokesale *R*; W. de K. *P.* [16] ad graunte *R, B, D, P.* [17] *Om. last three words D, P.* [18] ses *D.* [19] *Ins.* qar *B*; *ins.* par quei *P.* [20] cele *B, P.* [21] al *Vulg., B, D.* [22] est *R.* [23] vendisoms *R.* [24] mettre *R, B, D.* [25] qi *A, R, P*; il *Vulg., B.* [26] trierre *A*; *insert* par dieu *R*; *insert* et *B.* [27] nestes pas partie a cesti breve *Vulg.*; nestes pas partie *R.* [28] Frisk *R*; Fr. *B, D.* [29] est *Vulg.*; il *B, D.* [30] *Ins.* nent *R*; pas *B.* [31] fin nengrosera jammes *R.*

Hunt. This same Thomas came one day into the Archbishop's court and surrendered to the bailiff who held the court this messuage as the villeinage of the Archbishop, and we received it from the bailiff to hold by villein services; and so we are tenant at the will of the Archbishop and not in freehold. Ready etc.

Willoughby. He was tenant etc. on the day etc. by our own lease, and has continued that estate without change. Ready etc. (Issue joined.)

14. BRAUNEBY *v.* COKESALE.[1]

Upon a fine of a reversion being levied, a *quid iuris clamat* is brought by the conusee against a tenant to compel attornment. The tenant cannot refuse to answer on the ground that the conusor is not in court. The tenant claims under a deed which apparently gives him a term of years in the tenement, but says that if the lessor attempts to alienate the tenement, then the lessee (tenant in this action) is to have the fee. *Qu.* as to the effect of such a deed. At any rate the tenant must say distinctly whether he claims a term or the fee.

Ralph of Brauneby sued the *quid iuris clamat* against W. of Cokesale, who came into court and said that he who granted the tenements after the expiration of the term was not in court either in person or by attorney; wherefore he [the tenant] ought not to answer [Ralph's] writ and is not put to claim any estate.[2]

Herle. The conusor [in the fine] is not a direct party to this writ, for by his conusance he granted the tenements after the expiry of the term, and by virtue of this conusance we have sued this writ, under which we are the party opposed to you, and the conusor is not.

Toudeby. I put case that the conusor had enfeoffed us by charter, and we desired to put forward this charter, who [I ask] would be a party to the trial? Not you, by God! Consequently you are not the party against us [in this matter].

Friskeney. If you wish to say that, say it, and then [the conusor] will come into court and will make himself party against you.

Toudeby. We do not say that, but if the conusor is not in court the fine shall never be engrossed.

[1] Record not found. Proper names uncertain.

[2] Some one has been granting the tenements to Ralph by fine, subject to a term of years. The fine is not yet completed by delivery of the chirograph, and the termor is called in to say what right he claims, and in a proper case will be ordered to attorn to Ralph the conusee. He begins by objecting that the conusor is not in court.

Malm. Dites quel dreit vous clametz et[1] avaunt qe la fine serra[2] engrossé il vendera, qar c'est a la court a veer s'il eient[3] partie avaunt qe la fyne soit ingrossé, et nient a vous.[4]

Toud. Ceo est a nous,[5] qar si le conisour fust mort nous ne r[espounderioms][6] nent avaunt qe soun heir vensist en court. Auxint par decea.[7] Et si le heir fust dedenz age nous[8] ne r[espounderioms][9] nient avaunt soun age.

Berr. Si le conisour fust mort ceo serroit altere,[10] qar dounqes convensist[11] qe soun heir vensist[12] en curt par le *scire facias*. Mès issint n'est mye en ceo cas, par quai[13] il semble qe asset est il[14] partie[15] a vous[16] chacer a dire quel dreit vous clametz.

Toud. Il est possible qe nous avoms[17] quiteclaim ou aultre choce del conisour, a quei il ne[18] put estre partie sauntz le conisour.

Berr. Il[19] put estre partie a vous pur reins[20] que[21] vous avez unqore dit[22] a soun bref,[23] qe ou bref veut quel dreit vous clamet etc. et vous n'avet uncore dit rien a son bref, ne par qey il ne put estre partie.[24] Par qey il covent qe vous diez quel dreit vous clamez.

Toud. Nous clamoms estat en ceux tenementz solom le purport de cest escrit, qe est le fait vostre conisour. (Et meist[25] avaunt le fait.[26])

Herle. L'escrit ne poet estat clamer, qar il ne poet parler. Par quai il vous covent parler par[27] bouche.[28]

Berr. Escrit[29] veot iij. choces. La premer qe le lessour[30] lui lessa[31] a terme des[32] viij. aunz, et si il mist avaunt mises e coustages en les tenementz qu'il eit en[33] la fine des viij. aunes ces[34] mises et ces[35] costages, par vewe de bons gentz, et s'il ne paiast a la fyn des viij. auns, qe le diz tenementz ly demurasent tanqe il eit pleinement ces mises et ces custages, et[36] puis veot l'escreit qe s'il aliene les tenementz duraunt le terme[37] qu'il demorge[38] feffé.[39]

[1] *Om.* et *A*, *R*. [2] seit *R*; soit *P*. [3] soit *P*. [4] *Om.* qar cest . . . vous *A*. *In R a similar omission, but the last four words appear. Text from Vulg., B, D, P.* [5] vous *R*. [6] resp' *A*; r' *R*, *B*, *D*, *P*. [7] de sa *R*. [8] il *D*. [9] resp' *A*; r' *R*, *B*, *D*, *P*. [10] autre *Vulg. B*, *R*, *D*, *P*. [11] convendreit *D*, *R*; covendroit *B*, *P*. [12] vendroit *P*. [13] qui *A*. [14] asset avez *R*. [15] asset ad il prove *P*. [16] *Ins.* a *Vulg. D*. [17] eoms *R*; eyoms *P*. [18] *Om.* ne *R*. [19] *Ins.* ne *A*. *Om. B, D, P*. [20] riens *D*; quanque *R*, *P*. [21] quei *A*. [22] eit *Vulg.* [23] *Omit to end of speech, A, Vulg., B, D. Supplied from R; sim. P.* [24] *Om.* par *and* ne *in this clause R*. [25] mist *R*, *B*. [26] lescrit *R*. [27] de per *Vulg.* [28] covent qe vous clamet lestat qe vous clamez par my vostre bouche *R*. *Sim. P, but* qe vous volez clamer. [29] Lescrit *P*. [30] conisour *P*. [31] *Ins.* les tenemenz *R*, *P*. [32] de *R*, *P*. [33] a *R*, *P*. [34] ses *B*, *D*, *P*. [35] ses *B*, *P*, *D*. [36] *Om.* par vewe . . . et *A*, *Vulg., B, D. Supplied from R, with which P accords in substance.* [37] *Ins.* avauntdit *R*, *P*. [38] meorge *R*. [39] *Add* par cest escrit *R*; *add* de mesmes les tenemenz par cesti escrit *P*; et si le lessor alien qil demorge feffe *X*.

Malberthorpe. Say what right you claim, and before the fine is engrossed [the conusor] will come, for it is not for you but for the Court to see before the fine is engrossed whether the party is present.

Toudeby. No, it is for us to see that; for, if the conusor were dead, we should not answer before his heir came into court; and so in this case. And if the heir were under age, we should not answer before his full age.

Bereford, J. If the conusor were dead the case would be altered, for then it would be needful that his heir should come into court upon a *scire facias*. But in this case it is not so. Therefore it seems that he [the conusee] is party enough to drive you to say what right you claim.

Toudeby. It is possible that we have a quitclaim or something else to which he [the conusee] cannot be a party without the conusor.

Bereford, J. For anything that you have said as yet in answer to his writ, he can be a party against you. His writ bids you say what right you claim (*quid iuris clamat*), and you have not as yet said anything to his writ nor why he cannot be a party. Wherefore you must say what right you claim.

Toudeby. We claim an estate in these tenements according to the purport of this writing. (And he put forward the deed.)

Herle. The writing cannot claim an estate, for it cannot speak; therefore you must speak with your mouth.

Bereford, J. The writing shows three things: first, that the lessor leased to him for a term of eight years, and [secondly] that if [the lessee] was at costs and charges in the tenement he should at the end of the eight years have his costs and charges [repaid] upon a view [of the improvements] by good men, so that if he [the lessor] did not pay him [the lessee] at the end of the eight years, then the tenements should remain to [the lessee] until he should be fully satisfied for his costs and charges; and [thirdly] the deed says that if [the lessor] alienates the tenements during the term [the lessee] shall remain enfeoffed.[1]

[1] Apparently the subject of *aliene* is the lessor, and the subject of *demoerge* is the lessee. If the lessor attempts to alienate the tenements, the lessee's term is to be enlarged into a fee. This is an arrangement that the parties might desire to make, regard being had to the plan for compensating the lessee for the cost of improvements. Fitzherbert (*Quid iuris*, 38) understood the case in this sense: he says that the deed showed a lease to a woman for eight years 'upon condition that if the lessor alienate during the term the woman shall have the fee.' As to such attempts to convert a term into a fee on the happening of some event, see Co. Lit. 216–8, and Butler's note.

Herle. La dreyn clause qe veot qu'il demorge feffé s'il aliene les tenementz denz le terme ne amount a reins. Et d'aultrepart la ou le fet [1] veot iij. choces, dount [2] il convient q'il se teigne a une, qar s'il clayme fee ceo est aultre choce.[3] Et die [4] la quel il claym.[5]

Toud. Nous clamoms solom le purport del escrit et issint r[espount] il a vostre bref asset.

Berr. L'escreit veot ij.[6] choces. Un veot [7] terme des auns et un aultre est qe [8] s'il aliene denz le terme *ut supra*.[9] Par quai aschune gent [10] entendent [11] qe vous voletz clamer fee par cel escrit [12] et [13] aschun gent [14] entendent qe vous voletz clamer terme. Pur ceo covent qe vous dietz a quel [15] vous volez [16] tenir.

Stonore.[17] Si nous clamoms fee [18] nous dotoms qe nous feissoms [19] foli,[20] qar avaunt [21] qe nous seoms atourné l'alienacioun n'est pas fait.[22] Dount nous dotoms [23] si nous atournissoms [24] nous sumes barrés de fee par l'attournement. Issint ne savoms quel [25] estat clamer.

Berr. Il serroit merveyl d'avoir fee et terme [26] d'une choce par un mesme fait.[27] En taunt [28] qu'il ad fee il n'ad pas terme, en taunt qu'il ad terme il n'ad pas fee.[29] Par quai il covent etc.

Friss. Vous veez bien quel estat il claim par l'escrit et par la conissaunce fait devaunt vous.

Toud. Ceo est une povre femme [30] qe ne seet [31] nule ley, et vous avez veue [32] le fait et la verité, et ele [33] vous prie qe vous la [34] diez quel estat ele [35] deit avoir [36] par cel escrit.

Herle. Purceo q'ele [37] seet nul ley il vous ad alowé [38] et [39] a vous est [40] a dire quel estat ele [41] deit clamer [42] en soun plee.[43]

Berr. A [44] vostre perille,[45] quel estat [46] vous clamez?

Stonore.[47] Nous clamoms a [48] terme de iiij.[49] aunz ovesqe [50] les condiciouns en [51] l'escreit.

[1] lescrit *R.* [2] *Om.* dount *R*, *P.* [3] par qay il cleime terme cest une voie, si fee cest autre voie *R.* *Sim. P.* [4] diez *B*; die *D*; die pur ceo *P.* [5] *Add* et r[esporroms] a ceo *R.* [6] ij. *A*, *D*, *P*; deux *R*; iiij. *B.* [7] est *R*, *P.* [8] qi *A.* [9] terme com avaunt est dit *R*, *P.* [10] *Ins.* par de sa *R.* [11] dient *B.* [12] *Ins.* et par ascunes paroles dedens lescrit *R.* [13] *Om.* et *R.* [14] et altres *P.* [15] diez quel deux *R.* [16] *Om.* volez *A.* [17] Scot. *R*, *P.* [18] *Om.* fee *R.* [19] fasoms *R*, *B*, *D.* [20] folie *R*, *B*, *D*, *P.* [21] *Ins.* ceo *R*, *P.* [22] perfet *R*, *P.* [23] *Ins.* de clamer fee par cel escrit et *R.* [24] attourne si lalienacion ne soit pas fait nous navoms qe terme, et si nous attournassoms *R.* [25] quil *A.* [26] virtue *R.* [27] a une feize *R.* [28] fet et par taunt *R.* [29] *Order of clauses reversed in R*, *P.* [30] cesti pover homme *R*; cest un homme povere *P*; femme *B*, *D.* [31] fet *R*; siet *P.* [32] veu *R*, *P*; vew *B.* [33] il *R*, *P.* [34] li *P.* [35] il *R*, *P.* [36] clamer *Vulg.*, *B*, *R*, *P.* [37] qil *R*; qe il ne *P.* [38] louwe *P.* [39] *Om. last five words A*, *Vulg.*, *B*, *D.* *Ins.* pur ceo *P.* [40] ley si estes vous *D.* [41] il *P.* [42] il clamera *R.* [43] a son peril *R.* [44] R[esponez] a *B*, *D*, *P.* [45] peril *R*, *B.* [46] dreit *R.* [47] Staunt. *R*; Ston. *B*, *D*; Stonor *P.* [48] *Om.* a *D.* [49] viij. *B*, *P.* [50] ensemble *R*; ensemblement *P.* [51] de *P.*

Herle. The last clause, which says that he is to remain enfeoffed if he alienates the tenements during the term, amounts to nothing. Moreover, whereas the deed says three things, it is necessary that he should hold himself to one of them; for if he claims a fee, that is one thing, and if he claims a term, that is another. Let him say which he claims: [fee or term].

Toudeby. We claim according to the purport of the writing, and so we make answer enough to your writ.

Bereford, J. The writing says two things: one shows a term of years, and another is to the effect that if [the lessor] alienates within the term, then, as aforesaid [the lessee is to remain enfeoffed]. So some folk here understand that you wish to claim a fee by this writing, and others that you wish to claim a term. Therefore it behoves you to say on which of these claims you will rely.

Stonor.[1] We fear that we might be acting foolishly were we to claim a fee; for before we are attorned the alienation is not complete, so we doubt to claim a fee by this writing, and, were we to attorn, we should be barred from the fee by the attornment. So we know not what estate to claim.

Bereford, J. It would be a marvel to have fee and term of one and the same thing by one and the same deed; for in so far as he has a fee he has not a term, and in so far as he has a term he has not a fee. Therefore it behoves you [to define your claim].

Friskeney. You can see well enough what estate he has by the writing and by the conusance made before you.

Toudeby. He is a poor man[2] who knows no law, and you have seen the deed and the truth, and he prays you [the justices] to tell him what estate he ought to have by this writing.

Herle. It is because he knows no law that he has retained you, and it is for you [his counsel] to say at his peril what estate he ought to claim.

Bereford, J. What estate does he claim? Answer at your peril.

Stonor. We claim a term of eight years with the conditions mentioned in the writing.

[1] Or perhaps *Scotre.* [2] According to another version, a poor woman.

Berr. Save le feffement,[1] vos mises et[2] vos custages vous serrount sauvez.[3] (Et sic atturnavit[4] etc.)[5]

15. ANON.[6]

Per que servicia, ou piert qe si le conisour seit mort soun heir deinz age, le tenaunt serra mye chacé d'atourner.

En un *per que servicia* le tenaunt dit qe le conisour fut mort et soun fitz denz age, jugement s'il deyt atourner, qar s'il vensist[7] et fut[8] de age il purroit dire qe lez tenementz furent donetz en fee taillé ou en aultre forme, jugement.

Willebi. Ceo n'est rein a vous, qar il ad[9] bref de fere venir l'eyr en court.

Hervi. Demorretz taunqe le age l'enfaunt.

16A. CODESTON *v.* TUNBRIDGE (PRIOR OF).[10]

Replegiari, ou il avowa pur heriete après la mort un Priour, ou piert qe par avowerie homme ne put propreté clamer si la propreté ne fut en sa persone jour de la prise q'il ne gagera la deliveraunce.

Waulter de Godestone fut attaché a respoundre au Priour de Tounbrigge[11] etc.

Malm. avowe[12] par la resoun qe mesme le Priour tient de luy le manier de R. par homage et par les usages[13] de prendre la meillour beof[14] maynoveraunt[15] en le soil le Priour[16] après sa mort,[17] de queux un Johan de W. fust seisi par my la meyn un P. priour predecessour

[1] *Ins.* vos autres conditions come de *Vulg.*, *B*, *D*. *R agrees substantially*; *also P.* [2] *Ins.* de custumes *Vulg.*, *B*. [3] *Ins.* issi devez attorner *R*. [4] adjornatur *Vulg.*; *in B* attorn' *has been altered into* adiornatur; attorn' *R*. [5] *A short abstract in X ends thus*: et attourna sauve a li ses mises ut supra. Quant a ceo qil demourge feffe, cel condicion tint Ber. de nulle value. [6] *Vulg.* p. 14. Text from *A*: compared with *B*, *D*. [7] *Perhaps* vousist *A*; vousit *B*, *D*, *Vulg.* [8] il fust *B*. [9] il y ad *B*, *D*. [10] *Vulg.* p. 14. Text from *A*: compared with *B*, *D*, *P*. [11] Taubrugg' *B*, *D*; Tenebrigg' *P*. [12] avowa *P*. [13] le usage *B*, *D*. [14] la meilloure beste *B*. *Sim. D*, *P*. [15] trovee meynoveraunt *P*. [16] en mesme le soil *P*. [17] apres la mort le Priour *P*.

Bereford, J. Except the feoffment, your other conditions about the costs and charges shall be saved to you.[1] And so attorn. (And in that form he attorned etc.)

15. ANON.

In a writ of *per quae servicia* when the conusor is dead the tenant will not be compelled to attorn while the conusor's heir is an infant.

In a *per quae servicia* the tenant said that the conusor was dead and that his heir was within age, and prayed judgment whether he ought to attorn; for if [the conusor's heir] came and was of full age, he [the tenant] might say that the tenements were given in fee tail or in some other form.

Willoughby. That is nothing to you, for there is a writ to make the heir come into court.

Stanton, J. The case must stand over until the infant is of age.

16A. CODESTON *v.* TUNBRIDGE (PRIOR OF).[2]

Replevin for an ox, which is still in the defendant's possession. Avowry for a heriot on the death of a Prior, tenant of the avowant. The avowry is pronounced to be bad because it ascribes to the dead Prior a property in the ox which endures after his death. The avowant apparently intended to rely partly upon tenure and partly upon a custom obtaining in the fief of the Earl of Gloucester throughout a certain district.[3]

Walter of Codeston was attached to answer the Prior of Tunbridge etc.

Malberthorpe avowed, for the reason that the said Prior holds of him the manor of R. by homage and by the usage of taking the best beast found manuring[4] in the soil of the Prior after his death, whereof one John of W. was seised by the hand of one P., Prior and

[1] As to this saving of the 'privileges' of a tenant who is compelled to attorn, see Co. Lit. 320 a.

[2] See the following record, whence the proper names are taken. The report is not very accurate.

[3] This case is Fitz. *Hariot*, 7. The apparent denial that the head of a religious house can have the 'property' in a chattel extends, we should suppose, only to that sort of 'property' which can continue after the proprietor's death. The head of a religious house could call goods *sua*, and sue trespassers and distrainors.

[4] In the old sense of the word: labouring.

cesti Priour, com par my etc., com de un chyvale en noun de heriete,[1] après la mort mesme celui fut seisi de auteu serviz [2] par my la meyn un successour P. etc.; le quel Johan de W. graunta ceaux serviz a cesti Waulter, par quel graunt le Priour se attourna, et fust seisi de ceaux serviz; après qi mort cesti Waulter [3] avowe la prise en noun de heriete [4] com del meillour beste meinoveraunt en soun soil solomc les usages [5] del manier du counte [6] de Gloucestre de L.[7] denz la purceint de quel manier cest tenaunce est.

Herle. Vous avez [8] avowé com del [9] profit qe vous deit escher [10] après la mort le Priour vostre tenaunt et [11] del chatel le Priour. Un [12] homme de religioun a la comune ley ne put propreté de chatel clamer. Jugement.

Pass. Nous lioms [13] ij. choces en cest avowrie qe [14] nous doune [15] tittle. Un est par tut [16] general costom du pays [17] saunz regard [18] avoir a nulli.[19] L'autre est [20] la possessioun de ceaux qe ount esté seisi de ceaux services par my la mayn lour tenaunt, que [21] estat de seignurie nous avoms.

Wilbi. Nous prioms qu'il gagent la delyveraunce.[22]

Malm. Nostre avowrie chiet en affermaunt propreté en nostre persone. Dount si nous suferoms la delyveraunce estre fait, nous [23] supposeroms la propreté estre a aultre,[24] que serroit contrarie [25] a nostre avowrie.

Berr. Vous dites talent.[26] Vous dusset avoir suffert le commaundement le Roi estre fet, et si vous ussez [27] par vostre avowrie atteint [28] a vostre purpose, retourne vous ust esté agardé. Estre ceo, homme ne poet [29] propreté clamer ou [30] la propreté ne fust en sa persone le jour de la prise etc.

[1] heritage *D.* [2] autiel servic' *B*; au cieux services *D*; mesmes le serviz *P.* [3] William *A.* [4] heritage *D.* [5] *Ins.* et la constitution *P.* [6] countee *Vulg.*, *B*; contee *D*; conte *P.* [7] *Om.* de L. *P.* [8] *Ins.* ew *A*; *om. B, D.* [9] de *D*; de un *P.* [10] eschair *B, D*; a vous dust cheyr *P.* [11] cum *P.* [12] ou *Vulg.*, *B, D*; ou nul *P.* [13] loioms *D.* [14] com *A.* [15] dorrount *P.* [16] *Ins.* le *Vulg.*, *B, D.* [17] une est custume general usee par my le pays *P.* [18] agard *B. D.* [19] *Ins.* tenaunce *P.* [20] en *A.* [21] tenauntz qi *B, D*; meyn des tenauntz qi *P.* [22] *Om. until after the next* delyveraunce *Vulg.*, *B.* [23] si *P.* [24] proprete en altri persone *P.* [25] contrariant *P.* [26] *Ins.* qar *P.* [27] eussietz *B.* [28] atein *A*; atteint *B*; atteynt *D, P.* [29] nul home put *P.* [30] si *P.*

predecessor of this Prior, as by [the hand of his very tenant], for a horse in the name of a heriot; and after his death he was seised of the like services by the hand of a successor of P.; and the said John of W. granted those services to this Walter, upon which grant the Prior attorned himself, and Walter was seised of these services; and after the death of the [last mentioned Prior] Walter avows the taking, by way of heriot, of the best beast manuring in his soil, according to the custom of the manor of L. [held] of the Earl of Gloucester, within the precinct of which manor the tenancy is etc.

Herle. You have avowed as for a profit which ought to fall to you after the death of the Prior, your tenant, from the chattels of the Prior. But at the common law a man of religion cannot claim property in a chattel. Judgment.

Passeley. We join two matters in this avowry as giving us a title. One is a general custom of the country without regard to any particular person. The other is the possession of those who have been seised of these services by the hand of their tenant and whose estate in the seignory we have.

Willoughby. We pray that they may give gage for the delivery [of the beast].

Malberthorpe. The point of this avowry lies in affirming the property in our person, so that if we suffer a delivery to be made we shall be supposing the property to be in another person, and this will be contrary to our avowry.

Bereford, J. You talk at random.[1] You ought to have suffered the King's command [for the replevin of the beast] to be executed, and then, if by your avowry you had attained your purpose, a return [of the beast] would have been awarded to you. Moreover, a man cannot claim property where the property was not in him at the time of the taking etc.

[1] We suggest this as the nearest equivalent to the common phrase 'Vous dites vostre talent,' or 'Vous dites talent.' Mr. Paget Toynbee, in the Glossary to his Specimens of Old French, p. 186, adopts 'You say your say.' It seems to mean 'You say just what you like' or 'just what comes into your head.'

16B. CODESTON *v.* TUNBRIDGE (PRIOR OF).[1]

Walterus de Codeston summonitus fuit ad respondendum Priori de Tunbrigge de placito quare cepit quendam bovem ipsius Prioris et eum iniuste detinuit contra vadium et plegium etc. Et unde idem Prior per attornatum suum queritur quod predictus Walterus die Mercurii proxima post festum Purificacionis B. Marie anno regni domini Edwardi Regis patris domini Regis nunc tricesimo tertio, apud Chelsham, in quodam loco qui vocatur le Holte, cepit predictum bovem, precii viginti solidorum, et eum iniuste detinuit contra vadium et plegium quousque etc. Unde dicit quod deterioratus est et dampnum habet ad valenciam centum solidorum. Et inde producit sectam etc. Et dicit quod predictus Walterus adhuc seisitus est de predicto bove et petit quod vadiat ei inde deliberacionem etc.

Et Walterus, per Petrum de Godalmynge attornatum suum, venit et defendit vim et iniuriam quando etc. Et bene advocat predictam capcionem et iuste etc., quia dicit quod ipse seisitus est de manerio de Chelsham in eodem comitatu etc., de quo manerio predictus Prior tenens est, scilicet, unum mesuagium, dimidiam carucatam terre et viginti acras bosci cum pertinenciis etc., per homagium et fidelitatem et faciendo ad scutagium domini Regis quadraginta solidorum cum acciderit duos solidos et sex denarios, et per servicium octo denariorum et unius denarii vel unius paris cyrotecarum per annum, et per consuetudinem talem quod idem Walterus dominus manerii predicti habebit post mortem cuiuslibet Prioris decedentis meliorem bestiam que fuit ipsius Prioris inventam manuoperantem in predictis tenementis que tenet de predicto manerio, quam quidem meliorem bestiam licet eidem Waltero inventam manuoperantem capere et tanquam propriam nomine herietti retinere et habere etc. Et dicit quod omnes domini predicti manerii semper hucusque habuerunt et habere consueverunt heriettum in forma predicta post mortem cuiuslibet predecessoris etc., et similiter quidam Willelmus de Watervilla quondam dominus dicti manerii, pater cuiusdam Johannis de Watervilla cuius heres etc., de quo idem Walterus perquisivit predictum manerium, fuit seisitus de predictis serviciis et herietto predicto capiendo in forma predicta, scilicet de uno bove post mortem cuiusdam Petri quondam Prioris etc. Et dicit quod omnes alii domini de feodo

[1] Of the following record of the preceding case, abridged and incorrect copies occur in some of the MSS. of the Year Book. Our text is from the De Banco Roll, Hilary, 2 Edw. II. (No. 174), r. 275, Surr.

16B. CODESTON *v.* TUNBRIDGE (PRIOR OF).

Walter of Codeston was summoned to answer the Prior of Tunbridge in a plea why he took a certain ox of the said Prior and detained it against gage and pledge etc. And touching this matter the Prior by his attorney complains that on [3 Feb. 1305] Wednesday next after the feast of the Purification of B. Mary in the thirty-third year of [Edward I.], at Chelsham in the said county [of Surrey], in a place that is called the Holt, Walter took the said ox, of the price of twenty shillings, and unjustly detained it against gage and pledge until etc. And he says that thereby he is put to loss and has damage to the value of a hundred shillings. And thereof he produces suit etc. And he says that Walter is still seised of the said ox and prays that he will gage the delivery thereof etc.

And Walter, by Peter of Godalming his attorney, comes and defends tort and force when etc. And well he avows the said taking and justly, for he says that he is seised of the manor of Chelsham in the said county etc., of which manor the Prior is a tenant, holding (to wit) one messuage and half a carucate of land and twenty acres of wood, with the appurtenances etc., by homage and fealty and by making scutage to the amount of two shillings and sixpence when the King's scutage runs at forty shillings [on the knight's fee], and by the service of eightpence and of one penny or a pair of gloves every year, and by the custom that the said Walter, lord of the said manor, shall have on the death of every Prior the best beast of the said Prior found manuring in the said tenements which he holds of the said manor; which said best beast so found manuring Walter may take and retain and have for his own in the name of a heriot. And he says that all the lords of the said manor have always heretofore had and been wont to have a heriot in manner aforesaid upon the death of every Prior predecessor of the now Prior, and likewise that one William of Waterville, formerly lord of the manor, father of John of Waterville (who was William's heir and from whom Walter purchased the said manor), was seised of the said services and of taking the said heriot in form aforesaid, to wit, of one ox on the death of one Peter sometime Prior. And he says that all the other lords of the fee of the Earl of

Comitis Gloucestrie in partibus illis huiusmodi heriettum capere et habere consueverunt de tenentibus suis post mortem eorundem a tempore quo non extat memoria secundum consuetudinem patrie etc. Et quia predictis die et anno invenit predictum bovem qui fuit cuiusdam Johannis quondam Prioris predecessoris etc. defuncti manuoperantem in predicto loco, qui est pars predictorum tenementorum oneratorum etc., cepit ipse predictum bovem tanquam heriettum sicut ei bene licuit etc.

Et Prior dicit quod predictus Walterus ad advocandum predictam capcionem in forma predicta admitti non debet etc. Dicit enim quod idem Prior est persona religiosa non habens proprietatem etc., et ex quo predictus Walterus in advocando etc. supponit dictum Priorem predecessorem etc. habuisse proprietatem in predicto bove, quod est communi iuri contrarium etc., petit iudicium etc. Dicit insuper quod predicta tenementa que predictus Walterus nititur onerare de predicto herietto fuerunt in seisina cuiusdam Hamonis de Watervilla antecessoris predicti Willelmi de Watervilla, de cuius seisina etc., qui quidem Hamo inde feoffavit quendam Johannem de Imewurthe tenendum per servicium unius paris cirotecarum, precii unius denarii, vel unius denarii per annum pro omni servicio. Et dicit quod idem Johannes postea de eisdem tenementis feoffavit quendam Priorem predecessorem ipsius Prioris tenendum in liberam, puram, et perpetuam elemosinam etc., de capitalibus dominis etc. Et dicit quod predictus Willelmus de Watervilla, frater predicti Hamonis etc., et pater predicti Johannis, de quo predictus Walterus perquisivit predictum manerium, concessit et carta sua confirmavit cuidam Priori predecessori ipsius Prioris et ecclesie sue predicte predicta tenementa etc., tenenda eidem Priori et ecclesie sue etc., de ipso Willelmo de Watervilla et heredibus suis per servicium contentum in carta quam predictus Hamo, frater predicti Willelmi, fecit predicto Johanni de Imeworthe etc. Et profert tres cartas que predictas donaciones et confirmacionem testantur etc. Et ex quo predictus Johannes feoffator predicti Walteri per factum predicti Willelmi patris predicti Johannis, cuius heres ipse est, si modo seisitus esset de predicto manerio etc., alia servicia quam continentur in predicta carta predicti Hamonis facta predicto Johanni de Imeworthe clamare vel exigere non posset etc., et predictus Walterus melioris condicionis esse non debet in hac parte quam predictus Johannes feoffator suus, unde petit iudicium etc.

Et quia videtur curie quod predictus Walterus iniuste advocat predictam capcionem etc., et contra legem communem, supponendo predictum Priorem predecessorem etc. habere proprietatem in

Gloucester in those parts have been wont to take and have from their tenants after their death, from time whereof there is no memory, [such heriots] according to the custom of the country. And because on the day and year aforesaid he found the said ox, which belonged to one John the predecessor then dead of the said Prior, manuring in the aforesaid place, which is part of the tenements thus charged, he took the said ox as a heriot, as well he might.

And the Prior says that Walter should not be admitted to avow the said taking in form aforesaid. For he says that the said Prior is a religious person having no property etc.; and whereas Walter in his avowry supposes that the preceding Prior had property in the ox, which is contrary to common law, he craves judgment etc. And he says moreover that the tenements which Walter seeks to charge with the said heriot were formerly in the seisin of one Hamo of Waterville, ancestor of the said William of Waterville, of whose seisin [Walter counts], and that Hamo thereof enfeoffed a certain John of Imeworth, to hold by the service of one pair of gloves, price one penny, or of one penny every year for all service. And he says that the same John afterwards enfeoffed a certain Prior, his predecessor, of the said tenements to hold in free, pure, and perpetual alms etc. of the chief lords, etc. And he says that the said William of Waterville (brother of the said Hamo and father of the said John from whom Walter purchased etc.) granted and by his charter confirmed the said tenements to a certain Prior, the predecessor etc., and to his church, to hold to the same Prior and his church etc. of the said William of Waterville and his heirs by the services contained in the charter which Hamo, brother of William, had made to John of Imeworth etc. And he produces three charters which testify the said grants and confirmation. And whereas the said John [of Waterville], Walter's feoffor, if he were now seised of the said manor, would, by reason of the deed of his [John of Waterville's] father William, whose heir he is, be unable to claim or exact services other than those contained in the said charter made by Hamo to John of Imeworth, and whereas Walter of Codeston ought to be in no better position in this behalf than that of his feoffor, he [the Prior] prays judgment.

And for that it seems to the Court that Walter avows the said taking wrongfully and against the common law in supposing that the said Prior, the predecessor etc., after his death could have property in

predicto bove post mortem suam etc., et clamando predictum heriettum, quod non est servicium exiens de tenementis, et eciam predictus Walterus non potest dedicere predictas concessionem et confirmacionem predicti Willelmi de Watervilla, antecessoris predicti Johannis feoffatoris ipsius Walteri, per quas concessionem et confirmacionem predicta tenementa exonerantur ab omnibus aliis serviciis quam de servicio predicti paris cirotecarum, precii unius denarii, vel unius denarii, prout continentur in carta predicti Hamonis facta predicto Johanni de Imeworthe quam idem Prior profert in curia hic, et aliis racionibus etc., consideratum est quod predictus Prior habeat returnum predicti bovis vel precium eiusdem et recuperet dampna sua, que taxantur per iusticiarios ad viginti solidos, et Walterus in misericordia: et quod quia predictus Walterus non potest dedicere quin ipse est seisitus de predicto bove et quod non permisit predictum bovem deliberari per preceptum domini Regis, in contemptu ipsius Regis etc., ideo ipse in misericordia.

17. ANON.[1]

Visus, ou piert qe si le tenaunt soy face essonier après vewe demaundé, il avera my la vewe.

Nota après vewe de terre demaundé si le tenaunt se face essonier, tot n'eit le demaundaunt sui le bref de fere[2] le tenaunt avoir la vewe, la vewe[3] n'est mye grauntable, purceo qu'il suppose sei[4] avoir la vewe.

18. ANON.[5]

Entré, ou piert qe, tut veygne le heir et die qe soun auncestre est mort et il tenaunt, le demaundaunt avera seisine de terre.

Un bref d'entré fut porté vers un tenaunt qe fit defaute.[6] Survynt un William, qe fust denz age et pria d'estre receu. Et dit qe celuy tenaunt fut entré en religioun en[7] ordre de Friere Prechours a Excestre[8] et profès, après quel professioun et dimise il entra en ceaux tenementz com friere et heire et est einctz[9] et denz age, et prioms

[1] *Vulg.* p. 14. From *A*: compared with *B*, *D*. [2] ferer *A*. [3] *Om.* la vewe *Vulg.* [4] ley *Vulg.*; sey *B*. [5] Text from *A*: compared with *B*, *D*, *M*, *P*. [6] *Add* apres defaute *M*. [7] ou *A*. [8] a W. *M*. [9] eins *Vulg.*; einz *B*, *D*.

the said ox, and in claiming the said heriot, which is not a service issuing from the said tenements, and also because Walter cannot deny the said grant and confirmation of William of Waterville, ancestor of John, feoffor of Walter, by which grant and confirmation the tenements are discharged from all services other than the service of a pair of gloves (price one penny) or of one penny, as is contained in the charter of Hamo made to the said John of Imeworth, which the Prior produces here in court, and also because of other reasons, therefore it is considered that the Prior have a return of his ox, or the price thereof, and damages, which are taxed by the justices at twenty shillings, and that Walter be in mercy. And for that Walter cannot deny that he is seised of the said ox, and that he did not suffer the ox to be delivered under the King's writ [of replevin], in contempt of our lord the King, therefore be he in mercy etc.[1]

17. ANON.

Effect of an essoin after view demanded.

Note that after a view of the land has been demanded, if the tenant causes himself to be essoined, then, although the demandant has not sued a writ to cause the tenant to have the view, the view is not grantable, for [by his essoin] he has supposed himself to have had the view.

18. ANON.

Receipt of third party. Religious profession. Infancy. Frank marriage.

A writ of entry was brought against a tenant, who made default after default. One William, who was under age, intervened and prayed to be received and said that the tenant in question had entered religion in the order of the Friars Preachers at Exeter and was professed, and that after this profession and demise he [the intervener] entered on these tenements and is 'in' and is within age. And (said he) we pray our age. And he prayed that no default might be

[1] In the margin of the roll two separate *misericordie* are noted.

nostre age. Et prie qe nulle defaute luy soit prejudicial.[1] Estre ceo, ceaux tenementz furent donetz a soun peire et a sa miere en fraunk mariage, et il entra en mesme lez tenements com friere et heir J., fitz a ceaux[2] a queux[3] le doun se fist.

Berr. Vous ditez choce qe veot[4] avoir ij.[5] issues. Tenetz vous al un.

Friss. Nous vous dioms[6] le fait,[7] et prioms vos avisementz.

Hedone. J., vers qi nous avoms porté cesti bref, ad fait defaute après defaute, par quei nous prioms seisine de terre.

Ber. Nous agardoms seisine etc.,[8] et eit[9] il soun recoverir vers vous par assise de novele diseisine[10] s'il entend[11] bien fere etc.

19. ANON.[12]

Dower, ou piert qe si le tenaunt face defaute après defaute soun issue en la taile sera recu a defendre soun dreit, tut furent les tenemenz donez a ly et as heirs de soun corps engendrez.[13]

Une femme porta soun bref de dower etc. Le tenaunt feit[14] defaute apres defaute.[15] Vint un A. et dit qe les tenementz furent donetz a soun peire et lez heirs de soun corps engendrez,[16] et il est eyné filz,[17] et pria d'estre receu a defendre soun dreit.

Berr. Heir ne poetz estre vivaunt vostre peire, qar[18] homme ne seit qi survivera ;[19] qar[20] jeo pose qe tenementz serrount[21] donetz en fee taillé a un homme ; celuy a qui le doun se taille[22] engendre[23] une fille[24] ; puis soit empledé ; la fille vint[25] et prie[26] d'estre receu a defendre etc.,[27] et est receu ; puis pendaunt le plee il[28] engendre[29] un filz ; puis la fille fait defaute ; le fitz vient en court et prie[30] d'estre receu ; coment serroit receu,[31] et coment tresaudra[32] le dreit tanque al[33] madle[34] del houre q'ele fut receu com heir ? Et certum[35]

[1] le tourne en prejudice *P.* [2] etc., *not* a ceaux, *Vulg.*, *B* ; ceus *D.* [3] qi *B*, *D*, *P.* [4] choses qe voillent *M*, *P.* [5] diverses *P.* [6] *Ins.* tut *M.* [7] dioms coment le fet est *P.* [8] Si ag' etc. qe vous recoverez seisine de terre *M*, *P.* [9] dit *Vulg.* [10] *Om. last three words M.* [11] si lein veot *Vulg.* ; si lem veot *B* ; si lem veut *D* ; sil entende de *M*, *P.* [12] *Vulg.* p. 14. Text from *A* : compared with *B*, *D*, *P*, *R.* [13] Contrarium est lex (*late note in*) *B.* Coke 2 Inst. p. 345, cest case non est lex quia nemo est heres viventis (*late note in*) *D.* References to other cases of Edw. II., *P.* [14] fit *D*, *B*, *R*, *P.* [15] *Om.* apres defaute *B*, *Vulg.* [16] issaunz *P.* [17] et heir aparant *R* ; et heir aparust *P.* [18] qe *A*, *B*, *D* ; qar *P.* [19] survesvera autre *R.* [20] qe *A*, *B*, *D* ; et *P.* [21] soient *D*, *P.* [22] tailla *D*, *P.* [23] engendra *D.* [24] et *P.* [25] *Ins.* en court *R*, *P.* [26] pria *D.* [27] son dreit *B*, *R.* [28] le tenaunt *P.* [29] engendra *D.* [30] pria *D.* [31] *Om. last three words, Vulg. They stand in B ; not in D.* [32] defendre *Vulg.* ; deffendra *B* ; tresaundre *A* ; tresaudra *D*, *P*, *R.* [33] *Om. last three words, A, B, D. Supplied from R, P.* [34] maule *R.* [35] clarum *R.*

prejudicial to him. Moreover, these tenements were given to his father and mother in frank marriage, and he entered as brother and heir of J., the son of those to whom the gift was made.

BEREFORD, J. Your assertion tends to two different issues. You must hold to one or the other.

Friskeney. We tell you all the facts and ask your advice.

Hedon. J., against whom we have brought this writ, has made default after default; wherefore we pray seisin of the land.

BEREFORD, J. We award seisin etc., and let him [the intervener] [seek a] recovery against you by assize of novel disseisin, if he thinks that he can get any good thereby.

19. ANON.[1]

An action of dower is brought against a tenant in tail, who makes default. His heir apparent under the entail intervenes and prays to be received to defend his right. He is received.

A woman brought her writ of dower etc. The tenant made default after default. There came one A. and said that the tenements were given to his father and the heirs of his body begotten, and that he is the eldest son and heir apparent; and he prayed to be received to defend his right.

BEREFORD, J. Heir you cannot be during your father's life, for one cannot know which of you will be the survivor. And I put the case that lands are given to a man in fee tail, and he to whom the gift is 'tailed' engenders a daughter, and is afterwards impleaded, and the daughter comes and prays to be received to defend her right, and she is received, and then pending the plea he engenders a son, and then the daughter makes default, and the son comes into court and prays to be received:—how can he be received, and how could the right jump across[2] to the male when she has been received as heir?

[1] This case is Fitz., *Resceit*, 147. It is noticed and condemned by Coke, Sec. Inst. 345. The record has not been found.

[2] The *tresaudra* in the text is the future of *tressaillir*.

est qe la fille ne poet mye estre heir tauncq'il i ad madle;[1] par qey[2] il ensiwt qe vivaunt l'auncestre il ne put estre heire.[3]

Thoud. Ceaux tenementz furent donetz a luy et soun issue de soun corps,[4] et il est issue et eygné. Jugement.[5]

Herle. Vous ne voletz mye aforcer[6] qu'il soit heir; quei s'il entrelesse[7] cele parolle 'heir' il ne serra pas en cas de statut, qe dit 'admittantur heredes.'

Toud. Ceaux tenementz sount donetz a luy et a les heirs de soun corps engendrez, et[8] en taunt n'est le piere fors tenaunt a terme de vie, scilicet, de fraunctenement, et le dreit demort en la persone del issue.[9]

Pass. Jeo vous moustre[10] qe noun; qar le piere poet soul vouchere a garraunt en le dreit, et le garraunt[11] poet joindre[12] batil[13] et graunt assise, et s'il perdist[14] il n'avereit jammès recoverir de mesme la terre.[15]

Toud. Si nul issue issit,[16] celuy a qi la revercioun appent serroit receu. Quod plus est, et celui q'est tut estraunge;[17] purquai donques ne deyt le heir[18] estre receu, q'est plus privé?[19]

Berr. Si les tenementz furent donetz al piere et a la miere et a les heirs de lour ij. corps engendrez, et l'un fust mort et[20] celuy qe survesquit fust empledé, en ceo cas par aventure le issue serroit bien[21] receu, purceo qe homme seit bien[22] qe autre heir ne poet estre[23] si noun celuy q'est engendré de lour ij. corps.

Toud. Auxi bien poet l'un cas cheir[24] en nouncerteyn com l'autre; qar tot seit qe l'un a qi le doun se fist fust[25] mort, possible est q'il eyt[26] issue iij. fitz ou iiij., dount[27] homme ne seit[28] qi de eux serroit[29] heire.

Pass.[30] Si le peire vousist heide prier[31] del fitz, il ne serroit receu. Nyent plus ne serroit le issue.[32]

[1] *Om.* Et certum . . . madle *P.* [2] qi *A*; quei *B.* [3] vous ne poet dire qil est heir *R*; *sim. P.* [4] *Om. from here until after* soun corps engendrez *in Toudeby's next speech, Vulg., B, P.* [5] *Om.* jugement *A.* [6] ou force *A*; afforcer *D.* [7] heir et si vous entrelesset *R.* [8] *Om.* et *A, D.* [9] en le primer issue *Vulg., B.* [10] di *R*; mostrei *P.* [11] *Ins.* en le dreit *P, R.* [12] reindre *Vulg., and apparently so in B, D.* [13] bataille *R, D.* [14] perdiseit *D*; perdiset *P.* [15] *Ins.* cuius contrarium est verum ut dicitur *Vulg., B, D*; cuius contrarium est verum si nul dreit fut en sa persone demuraunt, quia res inter alios acta etc. par qey etc. *R, and sim. P.* [16] issut *R.* [17] et qe plus fort est cely q'est tut estraunge en le remayndre *R.* [18] lissue *R.* [19] *Om. last three words, R.* [20] par quey *A, D, P, R*; et *B.* [21] bene *A.* [22] homme *A*; bien *B, D, P.* [23] qe altre ne put estre heir *P.* [24] chere *R*; cheier *B, D.* [25] soit *B.* [26] eient *R*; ount *P.* [27] des queux *R.* [28] ne put juger *R.* [29] serra *R, B, D.* [30] Toud., *Vulg., B.* [31] vousit avoir eyde et priast eyde *P.* [32] il navereit point par quei nent pluis il ne serra receu *P.*

And it is certain that the daughter cannot be heir so long as there is a male; thence it follows that [in the present case] while his ancestor is living he cannot be heir.

Toudeby. These tenements were given to [his father] and the issue of his body, and he is issue and is the eldest.

Herle. You will never make out that he is heir; and if you leave out this word 'heir,' then he will not be within the Statute, for the Statute says *admittantur heredes.*[1]

Toudeby. These tenements are given to [the father] and to the heirs of his body engendered, so that the father is only tenant for his life and for [a mere] freehold, and the right dwells in the person of the issue.

Passeley. I will show that it is not so; for the father by himself can vouch to warranty in the right, and the warrantor in the right can join battle and the grand assize, and, if he [the father thus] loses, he [the son] never shall have recovery of the same land. (But the reverse of this is true, if he [the son] has any right in him, for *res inter alios acta etc.*, and therefore etc.[2])

Toudeby. If no issue issues, he to whom the reversion belongs shall be received, and (what is more) so shall a remainderman who is a total stranger. Why not then the issue, who is more privy?

Bereford, J. If the tenements were given to the father and mother and the heirs of their two bodies begotten, and the one of them died and the survivor was impleaded, in that case peradventure the issue should be received, for in that case one can know for certain that an heir there cannot be other than one who is begotten of their two bodies.

Toudeby. There may be just the same uncertainty in the one case that there is in the other, for albeit [in the case that you put] one of the two donees is dead, it may be that he has issue three or four sons, and we cannot say which of them will be the heir.

Passeley. If the father desired to pray aid of the son he should not be received, and no more shall the issue [be received in this case].

[1] Stat. Westm. II. (13 Edw. I.) c. 3: 'Eodem modo si tenens in dotem, per legem Anglie, vel aliter ad terminum vite, vel per donum in quo reservatur reversio, fecerit defaltam vel reddere voluerit, admittantur heredes et illi ad quos spectat reversio ad responsionem, si venerint ante iudicium.'

[2] This last sentence may be a note and no part of the report, but it comes from an early date. Passeley, if we understand him, has asserted that there can be a recovery against tenant in tail which will bar his issue. The annotator or reporter contradicts this. As regards the son, the recovery against the father would be *res inter alios acta.* Toudeby's statement that tenant in tail is really only tenant for life will be observed.

Toud. Nous avoms vew [1] avaunt ces houres qe un lyndrapier [2] de Lound[res] purchacea tenementz a luy et a sa femme et a les heirs de lour ij. corps engendrez, qe furent enpledetz, et firent [3] defaute, et purceo qu'il n'avoit [4] nul issue, veint celuy a qui [5] la revercioun apent [6] et pria d'estre et fut [7] receu. Pendaunt le plee si avoint un fitz,[8] qe fut porté en Baunk [9] en berce,[10] et pria d'estre receu, et fust receu ; et si furent [11] le peire et la meire en pleyne vie et umqore sount. Par quai nous prioms d'estre receu.

Et fust receu etc.[12]

20A. ANON.[13]

Entré, ou piert qe si jeo porte le mortdauncestre de mesmes lez tenementz après issu joynt en le bref d'entré, la chose aleggé, tut serra remué en baunk, et si le tenaunt face defaute le *cape* issera a l'un bref et al altre.

Entré où un quiteclaim [14] fust mys en barre, et fust dedit. L'enquest se joynt. Pendaunt quel enquest, le demaundaunt porta le [15] mort d'auncestre vers mesme le tenaunt des tenementz contenuez [16] en mesme le fait, ou le tenaunt dit qe [17] assise ne deit estre par la resoun qe mesme celuy demaundaunt porta un bref d'entré en baunk vers mesme cesti tenaunt [18] de mesmes les tenementz, ou il meist avaunt la quitclame, qe fut en court dedit, et demaunda jugement si, taunt com ele demoert en la court le Roy dedit, deveroit respoundre. Par quai il furent ajournez en baunk a certein jour. A quel jour le demaundaunt et le tenaunt veindereint en court. Le tenaunt [19] demaunda jugement *ut supra.* Par quai le fait fust fait venir en court, et jour doné a lez parties mesme le jour qu'il avent [20] en le bref d'entré ou [21] le fait fust dedit.[22] Par quai l'enqueste fut somouns al un bref et al autre, et veindereint.[23] A quel jour le tenaunt fist defaute, par quai le petit *cape* issit. Et puis fist aultre defaute, par quai seisine de terre fust agardé etc.

[1] vewe *R*, *D*; veu *P*. [2] lyndrap *R*; lyndraper *D*, *P*. [3] feseynt *R*. [4] naveynt *R*; navoyent *P*; qil ny avoit *B*. [5] qe *A*; qi *B*, *D*, *P*. [6] fut *R*. [7] *Om.* et fut *A*, *D*. *Om. from here to* et le pere *P*. [8] une file *R*. [9] *Ins.* devant vous *D*. [10] envers *Vulg.*; en berz *B*, *D*, *R*. [11] fust *A*. [12] Et fuit. *R*. [13] *Vulg.* p. 15. Text from *A*: compared with *B*, *D*. [14] quiteclemance *D*. [15] bref de *D*. [16] contenuz *B*; contenutz *D*. [17] qi *A*; qe *B*. [18] tenaunt *Vulg.*, *B*; Thomas *A*. [19] demaundant *Vulg.*, *B*. [20] avoient *B*, *D*. [21] et *D*. [22] *Om. last five words, Vulg. This omission is due to a miscorrection in B.* [23] vindrent *B*.

Toudeby. We have seen before now that a linendraper of London purchased tenements to himself and his wife and to the heirs of their two bodies begotten; and [the husband and wife] were impleaded and made default; and, because there was no issue, he to whom the reversion belonged came and prayed to be received; and pending the plea a son was born who was brought into the Bench before you in a cradle and prayed to be received and was received; and yet the father and mother were in full life, as they are to this day. Wherefore we pray to be received.

And he was received etc.

20A. ANON.

Practice. The same question raised in two actions. Consolidation of an assize and a writ of entry. When a deed has been produced and its execution has been denied the Court takes possession of it.

A writ of entry: a quitclaim was pleaded in bar and was denied. The inquest was joined. Pending the inquest, the demandant brought the mort d'ancestor against the tenant for tenements comprised in the same deed, and the tenant said that an assize there ought not to be because the same demandant brought a writ of entry in the Bench against the same tenant for the same tenements, and the tenant there put in a quitclaim which was denied [1] in court, and prayed judgment whether, so long as the quitclaim remains denied in the King's Court, he need answer. Wherefore they were adjourned into the Bench to a certain day.[2] At that day the demandant and tenant came into court. The tenant prayed judgment as above. Wherefore the deed was made to come into court, and a day was given to the parties—namely, the same day that they had in the writ of entry when the deed was denied. Therefore the inquest was summoned under the one writ and under the other. And the inquest came, and the tenant made default; wherefore the petty *cape* issued; and afterwards he made another default, and therefore seisin of the land was awarded etc.[3]

[1] That is, the execution of the deed was denied by the plea *non est factum.*

[2] The proceedings in an assize are not, it will be remembered, proceedings that as a general rule pend before either of the Benches; they are initiated before justices of assize.

[3] See the next case: another version of the same. A further note of it occurs in our main MS. at the end of the Hilary Term, an. 2.

20B. ANON.[1]

Nicholas Balanse [2] porta son bref d'entré vers Agnes Balanse, qe vint en court et mist avant un quiteclame en barre, le quel [3] fut dedit, par qai enqueste se joynt entre eux. Pendaunt l'enqueste mesme celui N. porta un assise de mortdancestre vers le dit A., e demanda autres tenemenz qe furent compris denz mesme l'escript qe fut dedit etc. Agnes vint [4] et dit qe assise ne deit estre par la reson qe mesme celui N. en banc porta un bref d'entré vers mesme cestui Agnes et demanda certein tenemenz vers lui, ou ele mist avant fet [5] contre lui, lequel mesme cesti N. dedit, denz quel fet [6] ceux tenemenz q'ore sount en demande par cesti bref de mortdancestre sount compris ensemblement ove les [7] tenemenz q'il demande [8] par son bref d'entré, par quel fet nous vous barroms [9] si nous le eussoms en poigne,[10] et demandoms jugement si, entaunt com cele [11] demoert en la court nostre seignur [12] dedit, devoms respondre.

Par qei il furent ajournez en [13] baunc a certein jour. A quel jour [14] A. et N. vindrent en court, e A. demanda jugement *ut supra*. Par quei fut dit a Sire Johan Bacoun q'il feit venir le fet, et il le fit venir.[15] Par qei [16] jour fut doné a meme le jour q'il avoint a son [17] bref d'entré. A quel jour le enqueste vint et furent [18] somons a ceo bref et al autre bref. Par qei A. entendy [19] qe l'enqueste passereit countre lui. Par qei ele fit defaute, et le petit *cape* fut agardé en l'un bref et [20] l'autre. A jour de petit *cape* retourné ele [21] fit defaute,[22] par qei seisine de terre fut agardé sanz agarder damages en assise de mortdancestre pur ceo qe l'assise fut tourné en une enqueste.

[1] Another report of the preceding case. Text from *M*: compared with *P*, *R*, *X*. [2] Balant *or* Balaut *R*; Baylaunt *P*; Waling' *X*. [3] la quele *R*, *P*. [4] *Ins.* en court *P*. [5] son reles etc. *R*, *P*. [6] quele quitecleime *R*; quel relees *P*. [7] *Ins.* autrez *R*, *P*. [8] demanda *R*. [9] barroms *M*; *so R in comp.* [10] poin *R*. [11] ceu fet *R*; cel fet *P*. [12] *Ins.* le Roi *R*, *P*. [13] a *R*. [14] *Om. last three words*, *M*. [15] *Ins.* qe fust dedit com avant *R*; qe fut desdit *P*. [16] *Ins.* lour *M*, *P*. [17] lour *R*, *P*. [18] fut *R*, *P*. [19] et A. aparsut *R*, *P*. [20] *Ins.* a *R*; en *P*. [21] *Om.* ele *M*. [22] fit altrefoize defaute *P*.

20B. ANON.[1]

Nicholas brought his writ of entry against Agnes. She came into court and put forward in bar a quitclaim, and this was denied, so that an inquest was joined between them. Pending the inquest, Nicholas brought an assize of mort d'ancestor against Agnes, and demanded other tenements which were comprised within the same writing which had been denied etc. Agnes came and said that there ought not to be an assize, for that the same Nicholas brought a writ of entry in the Bench against this same Agnes and demanded certain tenements against her, and that she put forward a deed against him which he denied, and in that deed are comprised the tenements which are now demanded by this writ of mort d'ancestor, together with the tenements which he demanded by his writ of entry, by which deed (said she) we should bar you if we now had it in hand; and we demand judgment whether we ought to answer so long as this deed remains denied in the court of our lord the King.

For this cause they were adjourned into the Bench to a certain day. Agnes and Nicholas came into court, and Agnes demanded judgment as above. Therefore Sir John Bacon[2] was told to cause the deed to come, and he caused it to come. Thereupon a day was given them, which was the same day that they had in the writ of entry. On that day the inquest came, having been summoned for the one writ and the other. And then Agnes, perceiving that the inquest would pass against her, made default, and the petty *cape* was awarded in the one writ and in the other. On the day of the return of the petty *cape* she made default. Therefore seisin of the land was awarded without any award of damages in the assize of mort d'ancestor, for that assize had been turned into an inquest.

[1] This fuller report of the preceding case is found in another set of MSS. In this instance the shorter report may have been obtained by condensation.

[2] Sir John Bacon, afterwards a justice, had at the beginning of the reign been appointed Keeper of the Writs and Rolls of the Bench. Calendar of Patent Rolls, 1307–13, p. 2 (6 Sept. 1307).

21. DEVEREUX *v.* DEVEREUX.[1]

Quid iuris clamat, ou piert qe si le tenaunt cleim fee par le fait le conisour, le demaundaunt avendra bien a dire le fait estre fait puis la conisaunce; ou piert qe enfaunt deinz age clam[era] poynt.

Quid iuris clamat, porté vers plusours; et les uns clamerent fee par le fait le conisour fait avaunt la conisaunce, et furent a issue qe puis la conisaunce: et les autres clamerent joynt estat ove un enfant deinz age, et pur ceo il ne attournerent pas.[2]

Johan Everois[3] et Eve sa femme porterent le *quid iuris clamat* vers Nichol Everois,[4] et plusours aultres [viz. David le Seriaunt, Johan Ragun et Sara sa femme et Johan soun fitz, et Maude qe fut la femme Richard le Bret.[5]]

Herle pur Nichol: Il claim fee par le fait H. le conisour[6] fait avaunt la conisaunce, et demaundoms jugement.[7]

Devom.[8] Il n'avait qe terme[9] jour de la conisaunce solom ceo qe la note suppose, prest etc.

Herle. A ceo ne poetz avenir, qar veez cy le fait vostre conisour, par my qi vous clamez estat, fait avaunt la conisaunce fait.[10] Jugement si encountre le fait a tiel averment devetz avenir.

Malm. Par my la conisaunce fait a nous le dreit se vesty en nostre[11] persone, et a meintener nostre dreit solom ceo qe la conisaunce et la note supposent[12] nous voloms averir qu'il n'avoit qe[13] terme jour de la conisaunce.

Berr. Vodretz vous defere le fait vostre conisour fait devaunt la conisaunce, a ceo qu'il dit, et[14] par tiel[15] averrement (*quasi diceret noun*)?

Pass.[16] Nous voloms averrer qe si nul fait soit fait ceo est puis[17] la conisaunce.

Berr. Entendetz vous[18] par tiel averment sur condicioun estre receu?[19]

[1] *Vulg.* p. 15. Text from *A*: compared with *B*, *D*, *M*, *R*. [2] The second note from *B*. [3] Emmori *Vulg.*, *B*; Emory *D*; Emorp *A*; Everois *M*. [4] Noreis *A*. [5] *Names from the record.* [6] par ceo fet le quel fet le homme que conust *M*; par ceu fet q'est le fet Huwe qe conust *R*. [7] *Add* si attourner doit *M*; s'il attourner deyve *R*. [8] Pass. *M*, *R*. [9] *Ins.* des aunz *M*. [10] *Add* a quel fet vous estes tut estraunge *M*; *sim. R*. [11] autre *Vulg.*; nostre *B*, *D*. [12] *Om.* solom . . . supposent *A*, *B*, *D*, *Vulg.* [13] qi *A*; qa *M*; forsque *R*. [14] *Om.* et *B*, *M*, *R*. [15] dit parcel *Vulg.*; dit par cel *B*; un *R*. [16] *M. omits this offer of a conditional averment and Bereford's rejection of it.* [17] ceo ne fut pas pus *R*. [18] *Ins.* bien *Vulg.*, *B*. [19] qe nous receveroms tiel averement *R*.

21. DEVEREUX *v.* DEVEREUX.[1]

In a *quid iuris clamat* the tenant claims the fee under a deed of the conusor. The conusee cannot plead that if such a deed was made it was made after the conusance, but should say positively that the deed was made after the conusance. *Semble* that in a *quid iuris clamat* a tenant shall not be put to claim an estate while he is under age, even though he is in by purchase; and that those who hold jointly with the infant will not be compelled to attorn until he is of age. An infant who is a purchaser of tenements cannot make an effectual render of them in a writ of right.

John Devereux and Eva his wife [conusees in a fine in which Hugh Devereux was conusor] brought the *quid iuris clamat* against Nicholas Devereux, [David le Seriaunt, John Ragun and Sarah his wife and John his son, and Maud widow of Richard le Bret].

Herle for Nicholas. He [Nicholas] claims a fee by the deed of Hugh the conusor, made before the conusance was made. We demand judgment whether we ought to attorn.

Devom.[2] He had only a term on the day when the conusance was made, as the note [of the fine] supposes. Ready etc.

Herle. To that you cannot get, for see here the deed of your conusor, through whom you claim estate, and this deed was made before the conusance, and to [this deed] you are a total stranger. Judgment, whether you can get to such an averment.

Malberthorpe. By the conusance made to us the right vested itself in our person, and to maintain our right we will aver that he had only a term on the day of the conusance, as the conusance and the note [of the fine] suppose.

Bereford, J. Can you by such an averment undo the deed of your conusor, made (so he, the tenant, says) before the conusance? (He implied that this could not be done.)

Passeley. We will aver that, if any deed was made, that was after the conusance.

Bereford, J. Think you that you will be received to a conditional averment like that?

[1] Proper names from the record. [2] Or Passeley.

Pass. Le fait fust feet puis la conisaunce, prest etc. (Et alii e contra.)

Et qaunt a Johan et [Sara [1]] eux tenent les tenementz joynt ovesque Johan le fitz Johan,[2] et veez cy lui,[3] qe[4] ne poet soun dreit conustre, qar il est denz age et prie soun age, et eaux ne pount sauntz luy, qe ad joynt estat ovesqes eaux, estat clamer.

Malm. La note testmoigne qu'il est purchaçour de ceaux tenemenz, et de soun purchace il[5] poet estre partie a batil et a graunt assise. Par quai a moult plus fort il poet conustre[6] estat de[7] terme, qe n'est qe chatel.

Stauntone. Poet enfaunt denz age en un bref de dreit rendre les tenemenz qe sount de soun purchace (*quasi diceret non*)? Et conissauns[8] soun[9] en[10] rendre.[11]

Berr.[12] Posom qu'il clame[13] terme des aunz la ou il ad fee et dreit, serroit ceo resoun qe cel clame serroit receu de court taunc com il fust denz age, qe cherreit a sa desheritaunce (*quasi diceret non*)? Par qai taunc com il serroit denz age il ne serroit[14] chacé[15] a nul estat clamer, et noun aultre ne[16] averount per iudicium[17] etc.

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 176), r. 51, Heref.

Nicholas Devereux ('de Ebroicis'), David le Seriaunt, John Ragun and Sarah his wife, John son of the said John Ragun, and Maud widow of Richard le Bret, are brought before the Court to confess (*cognoscere*) what right they claim in certain portions of the manor of Cheyneston which Hugh Devereux has here in Court granted to John Devereux and Eva his wife by a fine made between them.

Nicholas Devereux is asked by the justices what right he claims in a third part of the manor, which in the note of the said fine he is supposed to hold for a term of three years by the demise of Hugh Devereux. Nicholas says that he claims fee and right, for he says that Hugh, a long time before the said conusance (*recognitio*) made here in court, gave and granted and quitclaimed by a certain writing to his son, the said Nicholas, his heirs and assigns, all right that he (Hugh) had or could have in the whole of that land (with mills, gardens, etc.) which Isabella, mother of Hugh, had and held by way of dower of the free tenement of Nicholas 'Deveres,' her late husband, in the vill of 'Aynaldestone;' and of this writing profert is made; and

[1] *Name from record.* [2] *Name from record;* Johan lour fitz *M, R.* [3] ve le si *R.* [4] qil *D.* [5] *Ins.* ne *B, Vulg.* [6] *Ins.* son *M, R.* [7] a *M.* [8] conissour *Vulg.* [9] soune *R.* [10] *Om.* en *Vulg.* [11] et conuser soune rendre *B, D.* [12] Herle *M, R.* [13] clama *D.* [14] *Ins.* pas *M, R.* [15] chaste *Vulg.*; chace *B.* [16] *Om.* ne *B.* [17] a nul estat clamer et non attornavit per iudicium *M. R. ends with* clamer etc.

Passeley. The deed was made after the conusance. Ready etc. (Issue joined.)

Then[1] as to John Ragun and Sarah his wife, they hold the tenements jointly with John their son, and he is here for you to see, and he can make no conusance, for he is within age, and he prays his age, and they cannot claim estate without him, for he has a joint estate with them.

Malberthorpe. The note testifies that he [the infant] is a purchaser of these tenements, and concerning his own purchase he may be party to battle and a grand assize; and therefore *a multo fortiori* he can confess his estate for a term [of years], for that is only a chattel.

Stanton, J. In a writ of right can an infant within age render tenements of which he is purchaser? (A negative answer was implied.) And a conusance is of one nature with a render.[2]

Bereford, J.[3] Put case that he claims a term of years where he has fee and right; would it be reasonable that such a claim should be received by the Court when it would make for his disherison? (A negative answer was implied.) Therefore so long as he is under age he shall not be driven to claim an estate.[4]

The judgment was that he should not attorn.[5]

Note from the Record (*continued*).

Nicholas, the tenant, further alleges that the said third part of the manor is comprised in the said writing, and he demands judgment.

David le Seriaunt has to answer for five acres in the said manor, which the note supposes him to hold for a term of two years. He claims right, fee, and freehold under a writing made by Hugh Devereux a long time before the said conusance; and this writing he produces.

John and Eva are not able to deny (*non possunt dedicere*) that the said writings are the deeds of Hugh, but say that they were made by Hugh a long time after the conusance made in court, and pray that this be inquired by the country. Thereupon Nicholas and David join issue, and a *venire facias* for jurors is awarded.[6]

John Ragun, Sarah, and John, son of the said John Ragun, have to answer for six marks' worth of rent in the said manor, which the said Hugh in the note of the fine supposes them to hold for the term of five years. They say that John, son of John, is under age; and he says that before his full age he knows not how to confess the estate that he has in the tenements

[1] From whom this statement comes is not plain.

[2] Literally 'sounds in render.'

[3] Also attributed to Herle.

[4] This speech, perhaps, should end with 'and they shall have nothing else by way of judgment.'

[5] The only record that we have found shows an adjournment and no judgment.

[6] The part of the roll that contains this plea is damaged, and some words are illegible.

Note from the Record (*continued*).

(*nescit statum suum quem habet in predictis tenementis recognoscere*); and the three pray that the conusance [of the infant's estate] may stand over (*remaneat*) until his full age. A day is given them to hear their judgment on the octave of Michaelmas.

Maud, the widow of Richard le Bret, has to answer for twelve acres of meadow which the note supposes her to hold for a term of two years. She claims a freehold for her life of the inheritance of John, son of Richard le Bret. She pleads that Hugh Devereux demised the meadow to John Ragun and Sarah his wife, and John, son of John, to hold for their life (*ad totam vitam ipsorum*); and that Hugh afterwards granted the reversion to her late husband Richard and to her and to Richard's heirs; and that by virtue (*pretextu*) of this grant John, Sarah, and John rendered the meadow to Richard and Maud; and that afterwards, and long before the note of the said fine was levied in court, the said tenements being in the seisin of Richard and Maud, Hugh, by a certain writing, granted and quitclaimed to Richard etc. And Maud produces two writings of Hugh Devereux and a writing of John Ragun, the contents whereof are stated at length on the roll.

John and Eva Devereux then reply that Maud cannot, by the gift or

22. ANON.[1]

Voucher, ou piert qe le vouché fra mencioun de la rente q'il est a prendre de mesme la terre avaunt q'il entre.[2]

Johan Boteler vowce H. a garraunt de tenementz dount il fust enpledé. Qi vint en curt et garr[auntit], save a luy cent south a terme de la[3] vie le tenaunt. Et la cause[4] de mencioun de cent soutz fust pur ceo qe si le demaundaunt recovere il fra[5] la value, et le tenaunt[6] ne serra mye deschargé de les cent soutz etc.

23A. ANON.[7]

Forme de doun, ou piert qe la femme serra mye receu a defendre soun dreit si el ne seit nomé en le original, par le defaute soun baroun.

Forme de doun, ou le tenaunt fit defaute, la femme pria etc., et myst avaunt fait qe tesmoigna qe ceo fuist lour joynt purchace, et ne fuist pas receu quia extra casum statuti.[8]

Margerie qe fut la femme A. de B.[9] porta soun bref de fourme de doun vers un home, qi fait defaute après defaute. Survint la[10] femme

[1] *Vulg.* p. 16. Text from *A*: compared with *B*, *D*, *M*. [2] entre *doubtful* A. [3] sa *Vulg.*, *B*. [4] comune *Vulg.* [5] *Ins.* a *B*, *D*. [6] tenant *Vulg.*, *B*, *D*; garr' *A*. [7] *Vulg.* p. 16. Text from *A*: compared with *B*, *D*, *M*. [8] The second note from *B*. [9] Margerie de C. *M*. [10] sa *M*.

Note from the Record (*continued*).

render of John Ragun made to her husband and her, devolve herself from the duty of confessing to John and Eva that her tenancy is that stated in the note (*non potest se devolvere quin eisdem Johanni Deverois et Eva iuxta formam in predicta nota contentam etc.*); for they say that John Ragun, Sarah, and John, son of John, never had anything in the meadow by the demise of Hugh; and this they tender to aver.

Maud rejoins that John and Eva cannot be admitted to an averment by the country in this case against the deed of Hugh, which testifies to the contrary of the averment that they tendered, especially as Hugh is not in court, and John and Eva cannot confess or deny his deed. So Maud demands judgment.

A day to hear judgment is given on the octave of Michaelmas, and then another day on the octave of Martinmas. On that day John Ragun, his wife and son, Hugh Devereux, John and Eva Devereux, and Maud appear. And John and Eva Devereux say that, no matter what writings Maud produces, she had nothing in the meadow on the day of the grant and conusance of the reversion made to John and his wife, save only a term of two years; and this they are ready to aver by the country. Maud joins issue, and a *venire* is awarded for the quindene of Easter.

22. NOTE.

Warranty with a reservation of the rent due to the warrantor.

John Boteler vouched one H. to warrant lands for which [John] was impleaded. And [H.] came and warranted, saving to himself a hundred shillings during the life of the tenant. And the reason for the mention of the hundred shillings was that if the demandant recovers, [the warrantor] will have to give [to the tenant] an equivalent, and the tenant will not be discharged from the hundred shillings.

23A. ANON.[1]

In an action for land against a husband neither common law nor statute gives the wife the right to intervene unless she be named in the writ, although she alleges that she is jointly enfeoffed with him, and that he is losing the land by wilful default.

Margery, wife that was of A. B., brought her writ of formedon against a man, and he made default after default. The wife [of the

[1] This case is Fitz., *Resceit*, 148.

et dit q'ele fust joynt feffé[1] ovesqe luy et pria d'estre receu, et mist avaunt fait[2] que ceo testmoigna.

Malm. R[eceu] ne deit ele estre, qar ele n'est pas nomé en le bref.

Herle. Statut veot qe si homme perde ou rende tenementz qe sount del dreit sa femme et ele veigne en court avaunt jugement[3] q'ele soit receu. Et del houre qe nous fumes[4] en cas de statut, demaundoms jugement si nous ne devoms estre receu.[5]

Berr. Coment serra ele receu, qar[6] si ele serroit receu ceo serroit en abatement de[7] bref; et, si ele fut receu,[8] quele garraunt averoms nous d'aler au jugement, qar ele n'est pas partie au bref? Et d'aultrepart, si ele fut receu et voleit averir[9] ceo fait q'ele mette avaunt, et trové fust qe le fait ne fust pas tiel, ele[10] ne serra mye partie[11] purceo q'ele est covert de baroun.

Par quay agardé fust qe E.[12] recovereit sa demaunde.[13]

23B. NEVILLE *v.* NEVILLE.[14]

Margeri de Neville porta son bref de forme de doun en le *descendere* vers Simounde de Neville et plusors autrez. Et dit qe les[15] tenemenz furent donez a Johan Longlyne et Alice sa femme et as heirs de lours corps etc. Simounde de Neville et les autrez disoynt qe Johan Longline aliena mesmes les tenemenz devant statut après issu.[16] Margeri[17] dit qe Johan[18] morust seisi et qe un William de Moungomery les aliena pus Statut. Et sur ceo descenderent en pays. A jour quant l'enqueste passereyt, Simounde et les autrez firent defaute. Sur ceo vynt Amyas la femme Simounde et dit q'ele fut joynt purchaceresse[19] a son baroun, et dit coment son baroun veut perdre les tenemenz de gree, et prie estre receu etc., et mist avant chartre qe ceo testimoigne.

Margeri. Al aunciene ley ele ne serra mie resceu, ne par statut:

[1] *Om.* feffe *M.* [2] chartre, *M.* [3] *Ins.* rendu et prie d'estre receu *B.* *Ins.* rendu *D.* [4] sumes *Vulg.*, *B*, *D*, *M.* [5] *Ins.* a defendre son dreit *M.* [6] qe *A*, *B*, *D.* [7] du *B*, *D.* [8] *Ins.* et pledast *M.* [9] veer *M.* [10] *Om. to after next* q'ele *M.* [11] *sic A*, *Vulg.*, *B*, *D*; *but corr.* punie (?) [12] qe la femme *M.* [13] rec' seisine de terre et G. en la mercy etc. *M.* [14] From *R*, as of Hil. an. 2. [15] le *R.* [16] *Punctuation uncertain R.* [17] *Ins.* et *R.* [18] Johane *R.* [19] *In full R.*

tenant] intervened and said that she was joint feoffee with her husband, and she prayed to be received, and she put forward a deed which witnessed this.

Malberthorpe. She ought not to be received, for she is not named in the writ.

Herle. The Statute[1] says that if a man loses or renders tenements which are of the right of his wife and she comes into court before judgment, she shall be received; and since we are in the case mentioned in the Statute, we pray judgment whether we ought not to be received.

Bereford, J. How can she be received? If she were received, that would be in abatement of the writ; and if she were received, we should have no warrant for proceeding to judgment, for she is no party to the writ. Moreover, if she were received and desired to aver the deed that she puts forward, and it were found that the deed was not as she alleges, she could not be punished,[2] for she is covert.

Therefore it was adjudged that [the demandant] should recover her demand.

23b. NEVILLE *v.* NEVILLE.[3]

Margery of Neville brought her writ of formedon in the descender against Simon of Neville and others. And she said that the tenements were given to John Longline and Alice his wife and to the heirs of their bodies etc. Simon and the others said that before the Statute [*de donis*] John alienated the tenements after issue [born]. Margery said that John died seised and that William of Montgomery alienated them after the Statute. And thereupon they descended to the country. On the day when the inquest was to pass, Simon and the others made default. Thereupon came Amyas, Simon's wife, and said that she was a joint purchaser with her husband, and said that her husband was purposely allowing the tenements to be lost, and she prayed to be received, and she put forward a charter which witnessed [the joint purchase].

[*Counsel for*] *Margery.* Under the old law she [Amyas] shall not be received nor under the Statute, for the Statute says that

[1] Stat. Westm. II. (13 Edw. I.) c. 3.: 'si vir absentaverit se et noluerit ius uxoris sue defendere . . . si uxor ante iudicium venerit parata petenti respondere et ius suum defendere, admittatur uxor.'

[2] But see the French text.

[3] Apparently a fuller version of the preceding case. Record not found. Proper names uncertain.

qar[1] statut veut qe la ou femme est nomé en bref q'ele seit resceu etc. Mès ore n'est mye etc. Par qey etc.

Les Justices virent le statut qe voleyt 'secundum formam brevis quod prius impetravit super virum et uxorem.' Mès ore ne avoit il nul bref porté vers la femme. Par qey etc.

Herle. Grant duresse serroit si ele ne fut r[eceu]. Par collusion de son baroun la femme perdereit son dreit.

Berr. Si ele fut receu qe deireyt ele forke abatereit le bref? Ceo serreit beal qe cel qe n'est pas[2] nomé en le bref abatereyt le bref. Par quel lay perdereyt son bref? Ne pout il veer qe la court n'a pas gar[aunt]?

Herle. La mise de l'enqueste ne fut pas fourny de lay, qe la ou il diseynt qe Johan Longline[3] aliena, la diseynt il que Johan morust seisi et que William Mongomery aliena, ou il dussent avoir dit qe Jon aliena mye.

Scrope.[4] Si trové fut qe Jon aliena mye, mès[5] William, qel jugement ceo freyt? Certes qe la demandante recovereyt seisine de terre.

Berr. Pur ceo qe vous ne seet autre chose dire par qey vous devet estre receu, si agarde ceste court qe Margerie recovere seisine de terre.

24. ANON.[6]

Replevine, ou piert qe si une parcenere eyt aliené, l'avowerie est meintenable par homage sur l'altre parcenere.

Avowrie fust fait pur homage etc. sur un des parceneres. Qe vint en court et dit qe une Agneys sa parcenere eyné de luy avoit fait homage et il[7] de sa mayn avoit receu et ele est en pleyn vie, et demaunda[8] jugement si vivaunt sa parcener, pur aultre homage, qu'il

[1] *Ins.* par *R.* [2] cel en quest pas *R.* [3] Hoglin *R.* [4] *Name doubtful R.* [5] me *R.* [6] *Vulg.* p. 16. Text from *A*: compared with *B*, *D*. [7] ele *A*; il *Vulg.*, *B*, *D*. [8] demaundoms *B*.

where the wife is named in the writ she shall be received. But here she is not [named]. Wherefore etc.

The Justices looked at the Statute, which runs 'according to the form of the writ that he previously purchased against the husband and wife.'[1] But here there was no writ brought against the wife. Wherefore etc.

Herle. It would be a great hardship were she not received. The wife would lose her right by her husband's collusion.

Bereford, J. If she were received, what could she say except in abatement of the writ? A pretty thing it would be if one who is not named in the writ could abate the writ! By what law is [the demandant] to lose her writ? Cannot [you] see that we have no warrant [to receive this applicant]?

Herle. The mise for the inquest was not fashioned according to law;[2] for whereas [the tenants] say that John Longline alienated, [the demandant], who ought to have said that he [John] did not alienate, said that he died seised and that William of Montgomery alienated.

Scrope, J. If it be found that John did not alienate, but that William did, what would be the judgment? Of course it would be that the demandant recover seisin of the land.

Bereford, J. As you have nothing else to say in favour of your being received, this Court awards that Margery recover seisin of the land.

24. ANON.[3]

Homage by parceners. Alienation of a parcener's share.

Avowry was made for homage etc. upon one of several parceners. She came into court and said that one Agnes, the eldest of her parceners, had done homage, and the avowant had received it at the hand of [Agnes], and [Agnes] is alive; and she prayed judgment whether in the parcener's lifetime [the avowant] can make avowry for

[1] Stat. Westm. II. (13 Edw. I.) c. 3. The first part of the section gives the wife, or rather the widow, a *cui in vita* where the lands are recovered upon the husband's default. In that *cui in vita* the recoveror may have to show his right 'secundum formam brevis quod prius impetravit super virum et uxorem.' The statute then proceeds to give the wife another remedy, namely by intervention ('receipt') before judgment rendered.

[2] Or, as we should say, the issue for the jury was not good, for there was no clean traverse.

[3] Record not found. This case is Fitz., *Avowre*, 179.

ne fust seisi, poet avowrie faire. Et l'avowaunt en l'avowrie avoit fait mencioun coment une Agneys parcenere avoit aliené sa pourpartie a un Johan.

Berr. Durraunt la parcenerye le homage fut esteint pur l'entere,[1] mès si Agneys sa parcenere eit aliené a un estraunge homme, en taunt fust cel homage defet, et qe[2] l'avowri fust resonable[3] sur l'autre parcenere pur homage, qar ceo qe fust un heritage par sai par my le alienacioun chescun partie[4] est un grosse et la parcenerie[5] defet etc.

25. ANON.[6]

Fourme de doun, ou le tenaunt mist avaunt le fait l'auncestre le demaundaunt oed clause de garauntie, et pria la parole demoure taunqe a soun age.

Un Johan porta soun bref de forme de doune en le *descendere*[7] vers un Robert.

Toud. Nous ne grantom my qe ceaux tenemenz furrent donetz en fee taillé com il suppose par bref. Mès nous dioms qe soun piere, qi[8] heir il est, enfeffa[9] Robert a luy et a ses[10] heirs de mesmes ceaux tenementz et obliga luy et ses[11] heirs a la garauntie[12] par cest[13] chartre, et il est denz age. Jugement si a tiel bref, qe est en le dreyt, deive[14] estre receu.

Friss. Conusseez adeprimes si les tenemenz furent donetz en fee taillé auxint com nous avoms dit ou noun.

Toud. Taunc com vous estes denz age n'ai[15] mestier.[16]

Friss. Il covent conustre ou dedire, qar, si les tenemenz furent donez auxint com nous avoms dit, cest bref nous deit servir auxint bien denz age com de[17] pleyn age,[18] qar le bref nous est douné en lieu de mortdauncestre. Mès si vous voilletz disre qe les tenementz furent donetz en fee simple c'est autre voie a pleder.

Beref. A ceo vous respond il qe ceo bref en lue[19] de mortdauncestre ne poet servir, qu'il[20] morust pas seisi, einz en sa vie luy enfeffa et obliga etc. Par quai ceo est un bref[21] a quel vous ne poetz estre partie duraunt vostre nounage.

[1] lentr' *Vulg.* [2] qe *B, D*; qi *A.* [3] resceivable *Vulg., B, D.* [4] parcen' *A*; partie *B, Vulg.*; parcenere *D.* [5] perceiner *Vulg.* [6] *Vulg.* p. 16. Text from *A*: compared with *B, D, M.* [7] descendre *B.* [8] qe *A.* [9] *Ins.* un *B.* [10] ces *A.* [11] ces *A.* [12] grauntie *A.* [13] sa *B.* [14] doine *Vulg.* [15] *Ins.* jeo *B, D.* [16] *Ins.* a conustre ne dedire, jugement etc. *M.* [17] cum si nous fussoms de *M.* [18] *Om. remainder of this speech A.* [19] lieu *D.* [20] *Ins.* ne *Vulg., D.*; qar vostre auncestre ne *M.* [21] par qi n'est breve de droit *Vulg.*; par quei c'est un bref de droit *B*; *sim. D*; par qei ceo est vostre bref de dreit *M.*

homage other than that of which he was seised. And the avowant in his avowry had mentioned how Agnes, one of the parceners, had alienated her share to one John.

Bereford, J. During the parcenry the [claim for] homage was extinct; but if Agnes, one of the parceners, has alienated to a stranger, then thereby this homage was defeated, and the avowry for homage upon the other parcener was admissible; for before that the heritage was one single thing by itself, but by the alienation each share became a gross and the parcenry was undone, etc.

25. ANON.

An infant brings formedon in the descender. A plea is pleaded to the effect that the ancestor did not die seised. *Qu.* whether the action must stand over until the demandant is of full age.[1] Effect of a lineal warranty discussed.

One John brought his writ of formedon in the descender against one Robert.

Toudeby. We do not admit that the tenements were granted in fee tail as he supposes in his writ. But we say that his father, whose heir he is, enfeoffed Robert of the same tenements to him and his heirs, and bound himself and his heirs to warranty by this charter, and he [the demandant] is under age. Judgment if to such a writ, which is in the right, he ought to be received.

Friskeney. First confess, yes or no, whether the tenements were given in fee tail as we have said.

Toudeby. No need to do that while you are under age.

Friskeney. You must confess or deny. For if the tenements were given as we have said, then this writ serves us as well while we are under age as if we were of full age, for this writ is given us instead of a mort d'ancestor; but if you will say that the tenements were given in fee simple, that is another way of pleading.

Bereford, J. He answers you that this writ cannot serve you instead of a mort d'ancestor, for your ancestor did not die seised, but in his lifetime enfeoffed [the tenant] and bound his heirs to warranty. Therefore this is a writ to which you cannot be received during your nonage, for it is your writ of right.

[1] See Coke, Sec. Inst. 291. See also Maynard's Table (under *Formedon*): 'A formedon is in place of a mort ancestor, where the tenant in tail dies seised, Trin. 1 Edw. II. 16 [the present case], Hil. 3 Edw. II. 77; but it is in place of a writ of right where he does not die seised, Trin. 1 Edw. II. 16, Hil. 3 Edw. II. 77.'

Malm. Cest accioun est doné al heir ou al[1] aunciene laye[2] il n'avoit[3] nul remedie:[4] 'Que statim post mortem viri et mulieris[5] quibus tenementum[6] etc.;' par quai par[7] paroulles de statut auxint bien celuy qe est denz age com celuy q'est de pleyn age devereint estre[8] receu.

Friss. Les[9] paroulles de statut dounent auxi bien accioun a celuy q'est denz age com a celuy q'est de pleyn age.[10]

Toud. Nous vous dioms qe les tenemenz furent alienez devaunt statut, par quai si rein vous soit[11] barre ceo serroit la clause de garrauntie a vous barrir de vostre accioun qe vous ne poetz accioun avoir duraunt vostre nounage; qar si jeo fusse chacé[12] a respoundre duraunt vostre nounage vous serrez par force de ley chacé[13] a conustre la garrauntie solom le proport[14] de la chartre com heir du saunc[15] par[16] l'avauntage qe[17] purra acrestre[18] puis si rein vous doit descendre par my celuy[19] d'avoir a la value, de quele choce la court ne vous resceyvera jammès. Dount si jeo sey chacé[20] a respoundre duraunt vostre nounage, saunt ceo qe vous conusés la garrauntie, jeo perderoy[21] ma tenaunce sauntz rein avoir, qe tut vous fust[22] asés[23] descendue par vostre peir[24] après; qe serroit grant meschief de[25] ley; et issint tendrez vous l'une ovesqe[26] l'autre, qe ne poet mye estre suffert de[27] ley, qar si vous acrestereit avauntage de l'un part, vous acrestereit desavauntage[28] d'autre part etc.[29]

26. ANON.[30]

Nota par *Berr.*:—Après la mort moun auncestre jeo vous graunte les services moun tenaunt, qe ne se tourna[31] unqes a moy des services: quidez vous qe ley luy chacera de atourner par moun graunt avaunt ceo qe jeo ai desreigné[32] les services? Noun fra.

[1] par *M.* [2] ou al aunc' la *Vulg.*, *B*, *D.* [3] il yavoit *Vulg.*, *B*; il avoit *D*; il fut sanz *M.* [4] *Ins.* qar le statut dit *M.* [5] viri mulier *Vulg.*; viri mulier' *B.* [6] *Ins.* sic fuerit datum *M.* [7] *Ins.* les *B.* [8] *Om.* devereint estre *M.* [9] Le *A.* [10] *In M. this speech continues thus*: 'Estre ceo nous dioms qe les tenementz furent alienez pus statut, par qei si rien nous serreit barre ceo serreit la clause de garrauntie, et qaunt a ceo nous dioms qe rien est desendu par my nostre pere: jugement.' *Then follows this from* Toud.: 'Nous ne pledoms pas en barre a vostre accion, mes a targer qe vous ne poiez cest accion user duraunt vostre nounage, qar si jeo fusse chace' [*then as above*]. *This seems to be the preferable version.* [11] serroint *Vulg.*; serroit *B.* [12] *Om.* chace *A.* [13] chastie *Vulg.*; chascie *B.* [14] purport *B*; purporte *D.* [15] *Ins.* vostre pere *M.* [16] pur *Vulg.* [17] *Ins.* me *M.* [18] arrestre *Vulg.*; acrestre *B.* [19] le pere *M.* [20] si jeo vous chace *B*; si jeo chace *A.* [21] perdray *B*; perdrai *D.* [22] seit il *D.* [23] a ces *A*; assetz *B*, *D.* [24] par my vostre frere *Vulg.*, *B*; par my vostre pier *D.* [25] en *M.* [26] et *M.* [27] en *M.* [28] vous perderez l'avauntage *M.* [29] *Add* Et sic pendet *M.* [30] *Vulg.* p. 16. Text from *A*: compared with *B*, *D.* [31] attourna *B*, *D.* [32] defreigne *A.*

Malberthorpe. This action is given to the heir [in tail] where by the ancient law he had no remedy. 'Quae statim post mortem viri et mulieris quibus tenementum etc.'[1]: so says the Statute. Wherefore by the words of the Statute as well he who is under age as he who is of full age ought to be received.

Friskeney. The words of the Statute give this action as well to one who is under age as to one who is of full age. Moreover, we say that the tenements were alienated after the Statute; therefore if anything could bar us it would be the clause of warranty, but as to that we say that nothing descended to us from our father. Judgment.

Toudeby. We are not pleading in bar of your action, but only to delay it so that you cannot use it during your nonage; for, if I were driven to answer during your nonage, you as heir in blood would by force of law be driven to confess the warranty according to the purport of the charter because of the advantage which might accrue to us afterwards, by way of recompense in value, if anything were to descend to you from your father, and [to make such a confession while under age] the Court would never receive you. Therefore, if I were driven to answer during your nonage without your having to confess the warranty, I should lose my tenancy without having any recompense, albeit assets descended to you afterwards from your father; and this would be a great mischief in the law; and you would be holding both one and the other [to wit, these tenements and the descended assets], and the law will not suffer that, for if advantage should come to you one way, disadvantage should come to you another.[2]

26. ANON.[3]

Note by Bereford, J:—After the death of my ancestor I grant you the services of my tenant, who never attorned to me for the services. Do you think that the law will compel him to make an attornment upon my grant until I have dereigned the services? It shall not be done.

[1] In Stat. Westm. II. (13 Edw. I.), c. 1, *de donis*, are these words: 'Set statim post mortem viri et uxoris [the tenants in tail] quibus tenementum sic fuit datum post eorum obitum vel ad eorum exitum vel ad donatorem vel ad eius heredem, ut predictum est, revertatur.'

[2] One report adds, 'And so the case pends.'

[3] This is Fitz., *Attournement*, 15.

27. WALTON *v.* LATIMER.[1]

Replevine, ou il avowa pur damage fesaunt en le soil le pleintif pur ceo qe il [2] deit avoir le profit de pestre en certain temps par prescripcioun.

Robert de Waltone porta soun bref vers Lucé la Latimer et autres etc. de ij. vaches etc.

Pass avowa etc. par la resoun qe la lue [3] ou la prise fust fait est appellé Westone Mede,[4] en quel priee [5] ele ad un graunt place, par la resoun de quel place ele deit avoir tot [6] la profit par my et par tut le priee,[7] a qi qe le soil soit, qe après les fenes fauchés [8] et enportetz ele doit pestre en le soil en severaulté [9] saunz ceo qe nul doit pestre ou [10] comuner del jour Saint Johan a la goulle de Aust [11] après manger ; de quel estat ele ad esté seisi et toux ses [12] auncestres et touz ceaux q'ount tenuz cel place de temps de [13] memorie etc., et purceo q'ele trova les ij. vaches en le dit pree pessauntz ses [14] herbes après le [15] fenes faucchés [16] etc. avaunt le jour de la goule de Aust si les prist ele [17] en soun several etc. scil. a teil temps del an.

Herle. Nous dioms qe le lue [18] etc. est nostre soil demein [19] et ele est nostre veysyn,[20] issint qe nous ne tenoms rien de luy ne [21] especialté n'ad ele de nous ne de nul de nos auncestres par quei ele pusse [22] cel profit demaunder. Et de comune [23] dreit [24] nul [25] ne deit estre destourbé a pestre [26] soun soyl demesne saunt ceo qe homme [27] put [28] moustrer estat de seygnourye qe luy doune tittle de cel profit prendre [29] ou especialté [30] etc. d'avoir tiel profit countre comune dreit.[31] Par quei nous demaundoms jugement de cest avowrie etc.

Pass. Voletz ceo pur [32] respouns, qar ceo est al accioun [33] a destrure nostre avowrie ?

Herle. Cest excepcioun cheit en ley et par consequent [34] en descre-

[1] *Vulg.* p. 17. Text from *A* ; compared with *B*, *D*, *P*, *R*. [2] el *A*. [3] le lieu *B*, *D*. [4] Westmede *R*, *P*. [5] pree *B*, *D*. [6] *Om.* tot *D*. [7] pree *B*, *D*. [8] fauchies *B*. [9] severance *Vulg.* ; *misread from* severaute *of B*. [10] ne *D*. [11] gule daugst *B* ; gule daust *D*. [12] cez *A*. [13] dount *Vulg.*, *B* ; de *A*, *D*. [14] ces *A*. [15] les *B*, *D*, *P*. [16] *Ins.* et emportez *Vulg.*, *B* ; apres la feste Sein Johan etc. *R.* ; apres la Seynt J. *P*. [17] il *A*, *B*. [18] lieu *B*, *D*. [19] demesne *B*. [20] veisine *B*, *D* ; veysine *P*. [21] ne ele mette avant *R* ; ne ele ne mette pas avaunt *P*. [22] puist *B* ; put *D*. [23] *Om.* comune *Vulg.* ; son *D*. [24] Et de ley comune *P*. [25] *Ins.* home *R*. [26] *Ins.* en *R*, *P*. [27] q'il *D*, *R*. [28] ceo qil puisse *B*, *P*. [29] title a pestre en ceste pree *Vulg. B defaced.* [30] en espec' *Vulg.* ; en especiaute *D*. [31] profist come soun droit *Vulg.*, *B* ; profit contra son dreit *D*. [32] Ceo pernoms pur *B*, *Vulg.* ; Ceste avoms pur *D* ; Seiez avowe sur ceo *R*, *and sim. P*. [33] End of speech *R*. [34] ley parount *Vulg.*, *B*.

WALTON *v.* LATIMER.[1]

Semble that by prescription *A* may have as appurtenant to his tenement an exclusive right to depasture, during a part of every year, land that belongs to *B*. To the claim of such a right it would be a good answer that within time of memory one person was seised of both tenements.

Robert of Walton brought his writ against Alice la Latimer and others etc. for two cows etc.

Passeley[2] avowed etc. for that the place in which the taking was made was called Weston Mead, in which mead she has a great place, and by reason of that place she ought to have all the profit throughout the whole mead, no matter to whom the soil belongs, in such wise that after the hay is cut and carried away she ought to pasture the soil in severalty, so that no one else should have pasture or common there from the feast of St. John [June 24] to the Gule of August [Aug. 1] after dinner; and of this estate she and all her ancestors and all those who have held that place have been seised from time immemorial; and because she found the two cows in the said meadow, eating her grass after the hay was cut and carried away and before the day of the Gule of August, she took them in her several etc., to wit, on such a day in the year.

Herle. We say that the place etc. is our own soil, and she is our neighbour, in such wise that we hold nothing of her, and she has no specialty from us or from any of our ancestors, by reason whereof she could demand this profit. And of common right no one should be disturbed from pasturing his own soil unless [the disturber] can show some estate of lordship which gives him title to take this profit, or some specialty to have such a profit contrary to common right. Wherefore we demand judgment of this avowry.

Passeley. Do you wish that to be your answer?[3] It goes to our action, to destroy our avowry.

Herle. This exception raises matter of law and consequently is

[1] Proper names from the record. This case is Fitz., *Avowre*, 180.

[2] Passeley, Malberthorpe, and Friskeney for the avowant; Herle for the plaintiff.

[3] Or 'We take that as your answer,' or 'Be avowed on that answer.' These phrases all amount to the same thing: 'We dare you to a demurrer.' Fitzherbert (*Avowre*, 180) breaks off at this point his abstract of the case, remarking that Herle 'dared not demur,' and that issue was joined on a plea about unity of possession.

cioun des justices. Dount si la court veut[1] qu'il peut encontre comune dreit tiel avowerie fere[2] nous r[esporroms] asset.

Hervi.[3] En la forme qe vous avez[4] doné la[5] excepcioun si jugement se freit pur vous, il serroit ousté[6] tot temps d'avowerie.[7] Par quei il covent que vous le[8] tenet pur respouns[9] ou qe vous donetz aultre respouns.

Herle. Umqore dioms nous com avaunt en enforceaunt[10] nostre responce qe un H. de B.[11] fut seignour de la ville et teint le pree en demesne qe vous tenetz et qe nous tenoms et[12] puis le temps de memore en temps le Roi Johan,[13] et ceo qe vous avetz fust doné hors de sa seisine, puis[14] quel temps ceo que nous tenoms[15] ne poet estre obligé[16] en[17] tiel profit, qar il fust seisi de ambedeux les[18] parties; et demaundoms jugement, depuis qu'il i ad interrupcioun de seisine de tiel profist prendre et ceo puis le temps de memore, si[19] par tittle de[20] prescripcioun de temps pussent il bon avowrie feire.

Malm. Ces sount ij. r[espounses]. L'une chiet en descresioun[21] et l'autre en fait et en pays.[22] Par quai sur ceo r[espounse] qe chiet a diversités[23] ne devetz estre r[eceu].[24] Et purceo tenez vous al un.

Herle. L'un est[25] heide al[26] aultre, qar il chessent[27] ambedeux en ley,[28] qar[29] le premer conferme[30] le secounde. Si[31] prescripcioun du[32] temps seit aleggé qe commence hors de comune dreit et est discontinué par noun seisine, tiel prescripcioun ne doun tittle de avowerie.

Hervi.[33] S'il vousist traverser[34] la discontinuaunce qe vous aleggez, il covendreit estre[35] par paiys, ergo en fait,[36] et vous ne volez estre avowé sur vostre respounce, par quai il covent qe vous[37] tenetz a ceo.[38] (Et sic fecit.)[39]

Friss. Nous vous dioms qe Lucé et ses auncestres et ceaux qui

[1] veit *D.* [2] dount si lavowant ne poeit saunz especialte cele avowere faire *Vulg.*; *B is defaced*; dount si la court voille tiel avowerie receyvre *R*; *sim. P.* [3] Herin' *Vulg.*; Staunt. *P*, *R.* [4] lavetz *D.* [5] ceste *R.* [6] serront oustez *D.* [7] oustez a tout ceste pree mower *Vulg.*; oustez a toutz temps de avower *D.* [8] *Om.* le *D.* [9] qe vous les ostes par reson *P*, *R.* [10] affermant *P*, *R*; enforceaunt *D.* [11] Hughe de Bramptone *B*; Huwe de Beauchamp *P*, *R*; Hughe de Grauntpount *D.* [12] *Ins.* ceo *R.* [13] *Om. last five words P*, *R.* [14] a *P*, *R.* [15] *Om. four words A*; *supplied by B*, *D*; ceo qe nous avoms *P*, *R.* [16] oblie, *Vulg.*, *B.* [17] a *P*, *R.* [18] *Om.* les *B*, *D.* [19] ci *A.* [20] *Om.* tittle de *P*, *R.* [21] en ley *R*, *P*; en descrescioun des justices *B.* [22] *Om.* et en pays *P*, *R.* [23] chiet en diverses issues *Vulg.*, *B*, *D.* [24] *Om. this sentence P*, *R.* [25] *Ins.* en *R.* [26] de *R.* [27] cheent *B*, *Vulg.*; checeont *D*; cheunt *R.* [28] *Om. end of speech P*, *R.* [29] qe *A*, *Vulg.*, *D.* [30] affirme *Vulg.*; afferme *B.* [31] *Ins.* par *B*, *D.* [32] de *B*, *D.* [33] Stonore *P.* [34] travers *A.* [35] *Ins.* esteint *B*, *D*, *Vulg.*; il convendreit qe ceo fut enquis *R*; qe ceo fut trie *P.* [36] ergo etc. *B*, *Vulg.*; par qey ceo chet en fet *P*, *R.* [37] *Ins.* vous *B*, *D.* [38] al un *R.* [39] *Om. last three words*, *R.* *Then add* Herle. Nous dioms qe temps le roi Johan H. de B, fut seisi ut supra, jugement si prescripcion etc. *R.* *Sim. P.*

for the judgment of the Justices, and if the Court holds that she can make such an avowry against common right, then we will give you answer enough.

Stanton, J. In the form in which you [plaintiff's counsel] have taken the exception, if judgment were given for you, she [the avowant] would be ousted for ever from her avowry, therefore it behoves you to accept this answer, or to give her another answer.[1]

Herle. We repeat what we said, and by way of strengthening our answer we say that one Hugh of Beauchamp was lord of this vill and held in demesne the meadow which you hold and which we hold, and this within time of memory, in the time of King John; and what you have was given out of his seisin; since which time what we have cannot be bound to this profit; for he was seised of both parts. And, because since the time of memory there has been an interruption of the seisin of this profit, we demand judgment whether by title of prescription they can make avowry.

Malberthorpe. Here are two answers. The one falls within [the] judgment of [the Justices],[2] the other contains matter of fact and goes to the country. To these answers which make for different issues you ought not to be received. Therefore hold to one of them.

Herle. The one aids the other; both lie in law [not in fact], for the first confirms the second. If prescription which commences outside common right be alleged and it is discontinued by non-seisin, such prescription gives no title for an avowry.

Stanton, J. If the discontinuance which you allege were traversed, the traverse would be inquired of by the country; therefore it is matter of fact; and you do not desire that your answer should be avowed.[3] Therefore it behoves you to hold to one point [or the other].

Herle. We tell you that in the time of King John, Hugh of Beauchamp was seised as above. Judgment whether by prescription, etc.

Friskeney. We tell you that Lucy and her ancestors, and those

[1] In other words, 'You have fashioned your plea in such wise that it is a plea in bar of the action. [The avowant is quasi-plaintiff.] If you mean it to be, not that, but a plea to the form of the avowry, you must (according to the general rule) suggest a better avowry.'

[2] Or 'falls in law.' The two phrases are equivalent.

[3] That is, avowed by your client or his attorney.

estat nous avoms ount esté seisi de tiel[1] profit prendre du temps etc., saunt ceo qe Hugh de B. unques puis temps de memore seisi ne fust de cel parcel qe nous tenoms ore, prest etc.

Herle. Ceo n'est mye pleyn r[espounse], qar nous vous dioms qe Hugh de B. fust seignour de la ville, et ceo qe[2] nous[3] avoms est purchacé de luy.[4] Par quai cel parcel qe vous tenetz ne[5] par encheison de tiel parcel ne poit tiel profit prendre[6] ne clamer en le soil qe fust en la meyn le seignour puis le temps etc. Par quai il covent traverser la seisine H.[7] d'une part et d'autre.

Malm. Si le issue se prist[8] sur les deux pointis[9] par cas l'une serra[10] trové contrari,[11] par quai jugement ne[12] se parfornereit sur ij. contraries. Et[13] nous voloms averir qe[14] H.[15] ne fust unqes seisi puis le temps etc. de nostre parcel a quei vostre parcel appent, et qe nous avoms esté seisi d'avoir[16] le profit de la parcel qe vous tenetz[17] tut temps, en qi mayns etc. Et demaundoms etc.[18]

Berr. Et[19] vous surmettez[20] qe ceaux qi estat vous avez sount[21] feffez par H.[22] de soun pree auxi com ceux qi[23] estat il ount;[24] par quai[25] il semble q'il covent qe vous traversés ceo simplement ou qe vous diez coment vous estes avenu[26] par ley.

Pass. Nous avoms dit qe H.[27] ne fust[28] pas seisi puis temps etc., et a lour estat ne avoms pas[29] a pleder[30] ne de temps devaunt memorie ne avoms pas a moustrer. Par quai etc.[31]

Berr. Si Hugh fust seignour de la ville et fust seisi puis le temps etc.,[32] et le temps avaunt dust estre counté par nul,[33] et par consequent[34] nul prescripcioun continué, et vous ne traversez mye la seisine H.[35] tot[36] desicome il vous ount doné d'une part et d'autre, par quai il semble qe vostre respounse n'est pas asset suffisaunt etc.

[1] ceu *R*; cel *P*. [2] *Ins.* vous et *R*. [3] *Ins.* et vous *D*. [4] est de H. *R*. [5] *Om.* ne *Vulg. It is erased in B.* [6] Par qey de cel encheson de cele parcele qe vouz tenez vous ne poet tiel profit prendre *R*. *Sim. P, but* Par qei par encheson etc. [7] *Om.* H. *P, R*; Hughe *B, D*. [8] prent *P*. [9] sur ceu poynt *R*; sur tel point *P*. [10] serroit *B, P*. [11] contrarious al autre *B, Vulg.*; contrariant al autre *D, P*. [12] *Om.* ne *A*. [13] qar *P*. [14] qi *A*. [15] Hughe *B, D*. [16] de cele parcele qe nous tenoms et qe nous avoms este seisi d'avoir *R*; *sim. P*. [17] *Ins.* de *B, R*; *in D it is written, but expuncted.* [18] jugement *B*. [19] Si *Vulg., B*. [20] Il vous surmet *R*. *Sim. P*. [21] furent *Vulg., B, P, R*. [22] Hughe *B, D*. [23] que *A*. [24] R. ad *P, R*. [25] *Om.* auxi . . . quai *Vulg. In B a line has been drawn under these words.* [26] avenuz *R, P*. [27] Hug' *B*; Hughe *D*. [28] fut *P, R*. [29] *Ins.* mester *P, R*. [30] pledier *B*. [31] ne devant temps de memorie a mostrer coment nous sumes avenuz *R*. *Sim. P, but* nous avenymes. [32] *Om.* etc. *A, B, D*; de memorie *P*. [33] *Om.* et le . . . nul *P, R*. [34] nul et coniss' *Vulg.*; nul et per cons' *B, D*. [35] Hughe *B*. [36] dount *Vulg., B*; tut de pleyn *P, R*.

whose estate we have, have been seised of taking this profit from time immemorial, without this (*sans ceo*) that Hugh of Beauchamp was ever within time of memory seised of this parcel which we now hold. Ready etc.[1]

Herle. That is not a full answer; for we tell you that Hugh de Beauchamp was lord of the vill, and what you and we have is purchased from him; therefore, by reason of the parcel that you hold, you cannot take or claim such a profit in soil which within time of memory was in the hand of the lord. Therefore it behoves you to traverse Hugh's seisin of the one part and of the other.

Malberthorpe. If the issue be taken upon the two points,[2] perchance the verdict will be contrariant to itself, so that no judgment could be founded on the contradictory findings. And we will aver that Hugh was never since time of memory seised of our parcel, to which yours is appendant,[3] and that we have been seised of having the profit of the parcel that you hold at all times, in whosesoever hands it has been. And we demand judgment etc.

Bereford, J. They surmise that those whose estate they have, as well as those whose estate you have, were enfeoffed by Hugh of his meadow; wherefore it seems that you ought to traverse this simply or say how [they[4]] came to it by law.

Passeley. We have said that Hugh was not seised since time of memory, and as to their estate we have not to plead nor have we to show what happened before time of memory. Wherefore, etc.

Bereford, J. If Hugh was lord of the vill and was seised since time of memory, the time before that must be counted for nothing; and consequently there is no continuance of prescription; and you do not traverse Hugh's seisin of the whole, of the one part and of the other, as they have alleged it; wherefore it seems that your answer is not sufficient.[5]

[1] Observe (for the subsequent debate turns on this) that the allegation that Hugh was seised of the plaintiff's portion has not been traversed.

[2] Hugh's seisin of both parcels.

[3] Some MSS. omit 'to which yours is appendant.'

[4] But the French has 'you.'

[5] It appears from the record (see next page) that the avowant's counsel joined issue on the averment tendered by the plaintiff, their attempt to plead specially having failed.

Extracts from the Record.

De Banco Roll, Mich. 2 Edw. II. (No. 173), r. 247d, Bed.

[Avowry, omitting formal introduction.] . . . quia dicit [Alicia] quod predictus locus in quo etc. est quoddam magnum pratum, infra quod pratum ipsa habet quandam placeam prati, racione cuius placee eadem Alicia habet tale proficuum in toto prato predicto tam in alieno solo quam in solo suo proprio, videlicet, quod cum fena in eodem prato falcata et levata fuerint eadem Alicia depascere debet pasturam ubique in prato illo et tenere pasturam illam in separalitate, absque hoc quod predictus Robertus seu aliquis alius habens pratum in loco predicto pasturare possit in eodem ante horam nonam diei Gule Augusti proximo sequentis, et de quo proficuo ipsa Alicia et omnes antecessores sui, et similiter omnes tenentes predictam placeam prati, quam ipsa modo tenet, a tempore quo non exstat memoria, racione eiusdem placee, extiterunt continue semper hucusque seisiti. Et quia ipsa predictis die et anno invenit predictas vaccas in prato predicti Roberti in loco predicto, et ubi nullus cum averiis suis pasturare possit aut debet tempore predicto, pasturam illam ibidem depascentes, cepit ipsa vaccas illas et illas imparcavit, sicut ei bene licuit.

[Plea to the avowry.]—Et Robertus dicit quod predicta Alicia predictam capcionem titulo prescriptionis temporis iustam advocare non potest in hac parte, quia dicit quod tam predictum pratum quod predicta Alicia tenet quam pratum quod ipse Robertus modo tenet infra tempus memorie fuerunt in seisina cuiusdam Hugonis de Bello Campo, domini tocius ville predicte, qui de prato in seisina ipsius Alicie nunc existente postmodum feoffavit quendam Robertum de Braybroke, antecessorem predicte Alicie, et de prato ipsius Roberti feoffavit quendam Willelmum de Crauton, antecessorem ipsius Roberti: unde dicit quod predicta Alicia et antecessores sui non fuerunt seisiti de proficuo predicto habendo in prato ipsius Roberti a tempore cuius memoria non existit, sicut predicta Alicia dicit. Et de hoc ponit se super patriam.

[Joinder of issue.]—Et Alicia similiter.

28. WORKEDELEYE *v.* LANGTON.[1]

Replevine, ou le pleintif se voleit faire privé a l'avowement par forme de statut etc., et l'altre dit qe le feffour le plaintif n'avoyt qe fee tailé ; et le pleintif chacé a dire q'il avoyt fee simple.

Jordan de Wikele[2] porta soun *replegiari* vers Johan de Kyngestone et aultres etc.

West. Johan avowe pur lui et pur lez aultres, et par la resoun

[1] *Vulg.* p. 17. Text from *A*: compared with *B*, *D*, *P*, *R*. [2] Wylkeley *R*.

Note from the Record.

Alice, wife that was of William le Latymer, John of Newton, and John Legat were summoned to answer Robert of Wautone in a plea of replevin. The count charges them with taking two cows on [13 July] the Thursday next before the feast of St. Margaret in 1 Edw. II. in the vill of Eaton ('Etone') in a place called Westonmede: the damages are laid at forty shillings.

The defendants come and Alice answers for herself and the others, and avows the taking, because the *locus in quo* is a certain great meadow, within which she has a certain place of meadow, by reason whereof she has the following profit in the whole meadow as well in the soil of others as in her own, namely, that when the hay is cut and carried she may depasture the whole meadow in severalty, without Robert, or any other person who has meadow in that place, being able to depasture there before the hour of noon on the Gule of August [1 Aug.] next following. For this profit she prescribes. And, having found Robert's cows pasturing in his meadow when no one should pasture there, she took and impounded them, as well she might.

Robert replies that she cannot avow the said taking by prescription, because as well the meadow that Alice holds as the meadow that Robert holds were within the time of memory in the seisin of one Hugh de Beauchamp, lord of the whole of the said vill, who afterwards enfeoffed Robert de Braybroke, ancestor of Alice, of the meadow that is now in her seisin, and enfeoffed William of Crauton, ancestor of the plaintiff, of the meadow that the plaintiff now has; and so the plaintiff says that Alice and her ancestors were not seised of having that profit in the plaintiff's meadow from time beyond memory; and of this he puts himself upon the country.

Issue is joined and a *venire facias* is awarded for the quindene of Easter. It will be seen that the avowant's counsel were ultimately driven to an issue comprehending both tenements. The roll, as might be expected, shows no trace of the plaintiff's objection to the avowry: 'he dared not demur.'

28. WORKEDELEYE *v.* LANGTON.[1]

If *A*, tenant in fee simple, enfeoffs *B* in fee tail, and *B* enfeoffs *C* in fee simple to hold of the chief lord, then if *A* takes *C*'s beasts for services in arrear, *A* may avow upon *B*. He cannot be compelled to recognise *C* as tenant; by so doing he might lose the reversion.

Jordan of Workedeleye brought his replevin against John of Langton and others etc.

Westcote. John avows for himself and the others, and for the

[1] This case is Fitz., *Avowre*, 181. Proper names from the record.

qe le manier de G. ou etc. fust en la seisine un Robert Pestour[1] ael Elene femme Johan, qe hors de sa seisine dona le manier a Fouke de T. et a les heirs de soun corps engendrez a avoir et tenir de[2] luy et de ses[3] heyres[4] par homage et feaulté et un paire de esporouns de oer[5] et par dies soutz a l'esceu etc. et qaunt a plus etc.,[6] de queux services Robert fut seisi par my la meyn Fouke com par my etc. en fee taillé etc., et purceo qe le homage et feuté et les esporrouns[7] furent arere le jour de la prise,[8] si avowe il etc. sur Richar fitz Fouke com del dreit Elene.

Wilbi. A ceo[9] avowrie ne devetz avenir, qar Richard fitz Fouke[10] etc. dona ceaux tenementz a Jordan de W. en fee a tenir de chief seignourage[11] de[12] fee etc. par les services dues, et Jordan vous[13] ad[14] tendue[15] homage et feaulté et les esporrouns a Johan et a Elene sa femme[16] avaunt la prise, et unqore fesom.[17] Jugement, si sur aultre qe sur nous[18] puisse avowrie faire.

West. Seoms a un qe nostre ael dona les tenementz a tenir en fee taillé[19] com avaunt est dit, et puis dites ceo.

Wilbi. Ceo ne covent pas, qar nous ne devoms mye[20] pleder l'estat du tenaunt[21] en cest *replegiari*[22] ne l'estat nostre feffour, fors soulment sur les services. Et dioms qe nous sumes feffé par forme de statut etc.[23] et nous avoms tendu les services a vous et unqore fesoms etc. Jugement etc.

Pass. Si la court agardast qe nous vous deussoms[24] acceptier[25] com tenaunt a resceivre vostre homage, nous serroms forclos de la revercioun si Richard le fitz Fouke deviast sauntz heir de soun corps, dount[26] ley ne nous chacera[27] de resceyvre aultre tenaunt qe[28] nostre tenaunt par la taille a nostre desheritaunce.[29] Jugement.

Wilby. A pleder a la taille ne appent pas a cesti bref fors soulment[30] qe nous sumes[31] feffez a tenir de[32] chief seignourage[33] etc. solom forme de statut etc.[34]

Hervi.[35] Si le feffement soit tiel com les autres dient statut

[1] Pastre *R.* [2] a *B*, *Vulg.* [3] ces *A.* [4] *Om.* de . . . heyres *R.* [5] orretz *Vulg.*, *B*; et esporons dor *D*; *om.* et . . . oer *R.* [6] *Om.* et . . . etc. *R.* [7] homage etc. *R.* [8] *Om.* le . . . prise *R.* [9] tiel *R.* [10] *Ins.* sur qey *R.* [11] seignour come *Vulg.* [12] du *P.* [13] *Om.* vous *B*, *Vulg.* [14] avez *A*; ad *Vulg.*, *B*, *R.* [15] tendi *D.* [16] tendu les services souvent *R.* [17] fet *R.* [18] si sur Richard fuiz Fouk *Vulg.* *B defaced.* [19] tenementz a Foulk de T. *Vulg.* *B defaced.* [20] *Om. last three words and leave a blank space, Vulg. This is due to a stain in B.* [21] des tenemenz *R.* [22] en cesti bref *R.* [23] *Om. from after* soulment *and leave a blank space, Vulg. A stain in B.* [24] deverioms *R.* [25] accepter *D*, *R.* [26] *Ins.* ne *A*; *om. B*, *D.* [27] *Ins.* poynt *R.* [28] forsqe *B.* [29] desheretison *R.* [30] bref de pus *R.* [31] seioms *D.* [32] des *D.* [33] seigneurages *B*, *Vulg.* [34] *Add.* ut supra *Vulg.*, *B*, *D.* [35] Herin, *Vulg.*; Staunt. *R.*

reason that the manor of Hindley was in the seisin of one Robert Banastre, grandfather of John's wife Alesia, who out of his seisin gave the manor to one Fulk and the heirs of his body begotten, to have and to hold of him and his heirs by homage and fealty and a pair of gilt spurs and by ten shillings for scutage [when scutage should be at forty shillings on the fee] and for more [more and for less less]; and of these services Robert was seised by the hand of Fulk as by [the hand of his very tenant] in fee tail etc.; and because the homage and the fealty and the spurs were arrear on the day of the taking, therefore he avows in Alesia's right upon Richard, son of Fulk.

Willoughby. To this avowry you cannot get; for Richard, son of Fulk etc., gave these tenements to Jordan in fee, to hold of the chief lord etc. by the services due; and Jordan has before the taking tendered to you and Alesia your wife homage and fealty and the spurs, and he still makes the tender. Judgment, whether you can make avowry upon any other than us.[1]

Westcote. Let us be at one as to the fact that our grandfather gave the tenements, to hold in fee tail as aforesaid. And afterwards you can say what you are saying.

Willoughby. That is not needful, for we have not in this replevin to plead as to the estate of the tenant nor the estate of our feoffor, but only as to the services; and we say that we are enfeoffed according to the form of the Statute [*Quia emptores*], and we have tendered and still tender the services to you. Judgment etc.

Passeley. If the Court were to award that we should accept you as tenant to receive your homage, we should be foreclosed from the reversion if Richard, son of Fulk, died without an heir of his body. Therefore the law will not drive us to receive to our disherison any tenant other than our tenant in tail. Judgment etc.

Willoughby. It belongs not to this writ to plead about the entail, but only to plead that we are enfeoffed to hold of the chief lord according to the form of the Statute etc.

Stanton, J. If the feoffment be such as the others say, neither

[1] We learn from the record (see next page) that the plaintiff's plea to the avowry included a denial that the tenements were held by military tenure. This, however, did not affect the argument.

ne comune ley ne luy chacera[1] a resceivre altre tenaunt qe[2] par la fourme, qar ceo serroit a barrir[3] Elene de la reversioun, et nomement la ou le feffement[4] est fait en fee etc. Par quai il[5] covent qe vous dietz qe Richard avoit fee symple le jour qu'il vous feffa ou nemy.

Wilby. Qe Richard nostre feffour avoit fee symple le jour qu'il nous feffa, prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 167d, Lanc.

Jordan of Workedeleye brings a writ of replevin against John 'de Langetone de Neutone' and John le Seriaunt. The count says that on [October 6, 1306] Thursday next after Michaelmas in 34 Edw. I. at Hindley ('Hyndeleye'), in a place called 'Thurscharche,' John Langton took two oxen, and that on [January 9, 1308] Wednesday next after the Epiphany in 1 Edw. II. in the same place the two Johns took two cows; damages are laid at a hundred shillings.

John of Langton answers for both defendants and avows the taking, because Robert, son of Fulk Banastre, holds of him and Alesia his wife, in right of Alesia, the manor of Hyndeleye, to himself (Robert) and the heirs of his body issuing, by homage and fealty and the service of a pair of gilt spurs and ten shillings towards a scutage of forty shillings, and so in proportion; and that of these homage, fealty, and services one Robert Banastre, Alesia's grandfather, whose heir she is, was seised by the hand of Fulk; and for that the homage of Robert, Fulk's son, was arrear, he (John of Langton) avows the taking of one cow, and for that the service of gilt spurs was arrear for five years he avows the taking of another cow upon the said Robert as upon his very tenant in Alesia's fee.

Jordan pleads that he holds a moiety of the manor of Hyndeleye (which moiety John calls a manor) by the gift and feoffment of the said Robert upon whom the avowry is made, who thereof enfeoffed him, to hold of the chief lords of the fee by the services pertaining to that moiety; and that Robert held it of John and Alesia by homage and fealty and the said service of a pair of spurs without any military service; and that often since he was enfeoffed thereof he has offered the said homage and fealty and service to John and Alesia; and, since he is enfeoffed thereof to hold of the chief lords, he demands judgment whether John can avow upon any one else than him. (*Note continued on the opposite page.*)

[1] *Ins.* poynt *R.* [2] *Ins.* le tenant *R.* [3] barrer *B, R.* [4] feffour *D.* [5] *Ins.* vous *R.*

Statute nor common law will force him to receive any tenant other than his tenant according to the form [of the gift], for otherwise Alesia would be barred from the reversion, especially as the feoffment [to Jordan] was made in fee simple. Therefore you [Jordan's counsel] must say whether or no Richard had fee simple when he enfeoffed you.

Willoughby. Richard our feoffor had fee simple when he enfeoffed us. Ready etc.

Issue joined.

Note from the Record (*continued*).

John replies that Robert Banastre, Alesia's grandfather, whose heir she is, gave the manor to the said Fulk, to hold to him and the heirs of his body issuing in such wise (*ita quod*) that, if Fulk should die without an heir of his body issuing, the manor should revert etc., and since the manor is revertible (*sit revertibile*) to Alesia by the form of the gift, he demands judgment whether he ought to admit as his tenant any one other than the heir of Fulk. We subjoin the Latin text of this replication :—Et Johannes dicit quod predictus Robertus Banastre avus predicte Alesie, cuius heres etc. dedit predictum manerium cum pertinenciis predicto Fulconi tenendum eidem Fulconi et heredibus de corpore suo exeuntibus ita quod si idem Fulco obiret sine herede de corpore suo exeunte etc. manerium illud cum pertinenciis eidem Roberto Banastre et heredibus suis esset reversurum etc., et ex quo manerium predictum prefate Alesie sit revertibile per formam donacionis predicte petit iudicium si aliquem alium quam heredem Fulconis tenentem suum inde debeat admittere etc.

Jordan rejoins that Robert Banastre gave the tenements to Fulk and his heirs to hold in fee simple and not in the form aforesaid.

And because John cannot bring this matter into judgment without Alesia, order is given to summon her for Hilary quindene to answer along with him. Afterwards, the process between them having been continued to Trinity quindene, 2 Edw. II., Jordan and John come and Alice comes and joins herself to John her husband, and puts in her place Richard de Morle [as her attorney]. And John and Alesia, by attorney, say that Robert Banastre, Alesia's grandfather, whose heir she is, gave the manor to Fulk and the heirs of his body issuing in form aforesaid, and not in fee simple as Jordan says ; and of this they put themselves upon the country.

Jordan joins issue. A *venire facias* is awarded for the morrow of Martinmas.

29. BOYDEN *v.* ALSPATH.[1]

Replevine, ou il avowa en la fosse de sa gareine, et ou piert qe homme ne pura my avower la prise de reys hors de sa gareine.

Un Thomas se pleynt qe[2] un A. a tort prist soun firet[3] et iij. reys en Underelle.[4]

Hount. avowe[5] etc. par la resoun qe nous avoms en[6] nostre frauncténement garrein[7] en mesme la ville, ou le pleintif amena[8] de[9] ses[10] gentz S. et B. en sa garreine et iij. reys etc.,[11] pristerent conynges, et issint damage fesaunt etc. en sa coninger et nient en le lieu ou il ad counté[12] la prise estre fait, prest[13] etc.

Herle. Vous les[14] preistes en Underel et hors de vostre counynger et vostre gareyn, prest etc.

Hunt. Nous les trovames damage fesaunt, et il furent[15] hors de nostre counynger etc., et nous les[16] pursumes et praimes[17] etc.; issint le praimes nous en nostre counynger[18] etc.

Hervi.[19] Si il ussent prise[20] sus lour reys et lour furet et se fuereint[21] hors de vostre gareyn[22] en commune chaump, si vous li[23] veniset suaunt, quidet vous qe vous le[24] porretz prendre hors de ses[25] maynes auxint com chyval ou beuf[26] ou aultre beste qe vous vaisez[27] aler[28] hors de vostre blee cressaunt? Noun,[29] et[30] covent etc.[31] qe la prise etc. soit[32] fait denz vostre garreine.

Hunt. fust chacé a dire qe la prise fust fait denz nostre[33] garreine, et dit qe en le[34] fosse de sa garreine etc.

Et alii econtra.

Et ex hoc nota quod duplex potest esse causa, ou purceo qe les choces furent en lour mayns ou purceo qe le seignour poet avoir suy la forfetoure etc.[35]

[1] *Vulg.* p. 18. Text from *A*: compared with *B*, *D*, *R*. [2] Thomas porta son replegiari vers etc. et dit qe *R*. [3] furet *Vulg.*, *B*, *D*, *R*. [4] Underile *R*; Undereille *D*. [5] avowa *B*, *D*. [6] *Om.* en *A*. [7] franche gareyne *R*; qe nous avoms nostre franc' garreyne *D*. [8] maunda *Vulg.*, *B*; manda *R*, *D*. [9] *Om.* de *B*. [10] ces *A*. [11] *Ins.* les queux *R*. [12] il se pleynt *R*. [13] prise *A*. [14] ne *Vulg.*; le *B*. [15] et si afouement *Vulg.* *Owing to corrections B is not readable;* et si autrement ensuwant *D*; *ins.* e il sailerent *R*. [16] lui *D*. [17] pursiwymes et preismes *B*, *Vulg.* [18] *Om. last three words*, *Vulg.*, *B*, *D*. [19] Herin *Vulg.* Staunt. *R*. [20] s'il pristerent *R*; eussent pris *B*. [21] et sen fuerent *B*, *R*; et se fueront *D*. [22] gardyne *D*. [23] *Om.* li *R*; les *B*, *D*. [24] les *D*. [25] ces *A*; lour *B*, *D*, *R*. [26] auxi com il furent beofs ou vaches *R*. [27] veisez *R*; veissetz *B*, *D*. [28] a lier *Vulg.*; alier *B*. [29] blee. Certes nanyl *R*. [30] il *D*. [31] covent dire *R*. [32] prise fut *R*. [33] vostre *A*; sa *Vulg.*, *B*, *D*. [34] la *B*, *D*. [35] *Om. from end of Stanton's speech*, *R*.

29. BOYDEN *v.* ALSPATH.[1]

A landowner finding trespassers taking rabbits in his warren may be justified in taking from them, by way of distress, a ferret and nets; but he can no longer do this lawfully if the poachers have fled outside his warren. Replevin may be brought for a ferret.

One Thomas brought replevin against one William, and said that wrongfully he took his ferret and three nets in Underhill.

Hunt. avowed etc., for the reason that we have warren in our freehold in the said vill, and the plaintiff sent there his men,[2] to wit, S. and B., with three nets into the warren, and they took rabbits there, and we took [ferret and nets], doing damage in our conygarth and not in the place where he lays the taking. Ready etc.

Herle. You took them in Underhill and outside your conygarth and your warren. Ready etc.

Hunt. We found them doing damage, and they fled out of our warren, and we pursued them and took them, and thus we took them in our warren etc.

Stanton, J. If they took up their nets and their ferret and fled out of the warren into the common field, and you came up in pursuit, think you that you could take these things out of their hands, as you might take a horse or ox or other beast which you saw going forth out of your growing corn? Certainly not. It behoves that the taking be made in your warren.

Hunt. was driven to say that the taking was in [the defendant's] warren: he said that it was in the ditch of the warren.

Issue was joined.

Note that the reason of this[3] may be double, either because the things were in their hands or because the lord might have sued for a forfeiture, etc.

[1] This case is Fitz., *Avowre*, 182. Proper names from the record.

[2] The recorded avowry (see next page) does not suggest that the plaintiff sent his men to the warren, or that he was responsible for their actions.

[3] See the Latin text. The *causa* we take to be 'the cause of this decision.' The forfeiture here mentioned may be the forfeiture of ten pounds to which persons who hunted in warrens were liable. See 'Select Pleas of the Forest,' p. cxxv.

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 233, War.

William, son of Walter of Alspath, Walter, son of William of Alspath, and Walter of Bykenhulle were summoned to answer Thomas Boyden why they took a certain ferret and chattels of the said Thomas (*quendam furettum et catalla ipsius Thome*) and detained them against gage and pledge. And touching this matter Thomas says that William and the others on [February 7, 1308] Thursday next after the feast of the Purification of B. Mary in 1 Edw. II. at Alspath, in a certain place called Underhilfeld, took the said ferret and his chattels, to wit two nets of the said Thomas, and detained them against gage and pledge, until etc.: damages are laid at forty shillings. (*Note continued on the opposite page.*)

30. ANON.[1]

Dower ou piert q'il mist avaunt quiteclaime sauncz respoundre a la defaute.

Une femme porta bref de douer vers Johan, qe fit defaute après apparaunce. Le petit *cape* issit et retourné etc. La femme se prist a la defaute tut a trenche.[2] Et le tenaunt meist avaunt quiteclaime, qe ele avoit relessé en sa pure vefeté. Jugement, si encountre soun fait rein pusse demaunder.

Pass. Nous n'entendomps pas qe a tiel excepcioun devetz estre receus einz[3] la q'il eit sa defaute sauvé.[4] Et d'aultre part, si avauntage deust[5] avoir par my ceo fait, il covendreit qu'il fust moustré et aleggé avaunt[6] la defaute. Par quai etc.

Hales. Le quel qe ele fust mys[7] ou fait après, la quiteclaim est[8] asset bone.

Hedon. Nent nostre fait, prest etc.

Et alii econtra.

[1] *Vulg.* p. 18. Text from *A*: compared with *B*, *D*. [2] tout entrench' *D*. [3] *Om.* einz *A*; *ins. B*; si *D*. [4] resceu, eins la qe vous avetz sauve la defaute *Vulg.*, *B*. [5] *Ins.* il *Vulg.*, *B*. [6] *Om.* avaunt *A*. [7] *Ins.* etc. *Vulg.*, *B*. *Ins.* avant *D*; *the word seems to be dotted for omission, but is requisite.* [8] et *Vulg.*; est *B*.

Note from the Record (*continued*).

William and the others come, and William answers for himself and them and avows the taking, for he says that he has free warren in the vill of Alspath, and, because he found William of Wynyngston and William son of Gerard, men of the said Thomas, in the ditch of his wood (*in fossato bosci*), taking his rabbits within the said warren with the said ferret and nets,[1] he took the said ferret and nets, as well he might.

And Thomas says that William cannot avow the taking, for he says that William did not take the ferret and nets in the ditch of the said wood within William's warren, but took them in the place called Underhilfeld, where Walter has no warren: and he prays that this be inquired by the country.

Issue is joined and a *venire facias* is awarded for the octave of the Purification.

30. ANON.

Release pleaded by a tenant in an action who has made default.

A woman brought a writ of dower against John, who made default after appearance. The petty *cape* issued and was returned etc. The woman betook herself to the default right out.[2] The tenant put forward a quitclaim showing that in her free widowhood she had released, and he prayed judgment whether against her own deed she could demand anything.

Passeley. We think that you cannot be received to [plead] such an exception until you have salved your default. Moreover, if he is to take advantage by this deed, the deed ought to be alleged and shown before the default. Wherefore etc.

Hales. Whether it was produced before the default or made after the default, the quitclaim is good enough.[3]

Hedon. Not our deed. Ready etc.

Issue joined.

[1] The Latin runs: 'invenit homines . . . capiendo [*not* capientes] . . . cuniculos.'

[2] That is, she desired to stake her cause on the fact of the tenant's default.

[3] Translation dubious.

31 ANON.[1]

Fourme de doun, ou piert qe si enfaunt deinz age seit receu a defendre son dreit, il avera soun age.

Deux femmes *simul cum viris suis* porterunt lour bref de fourme de doune en le *descendere* vers une femme tenaunt en dowere et un enfaunt denz age par divers *precipe* et vers Richard et W. La femme[2] fist defaute après apparaunce, par quai etc. Et surveynt l'enfaunt denz age et dit qe la femme ne tient forsqe en dower del dowement soun ael, et le fee et le dreit en sa persone, et prie estre[3] receu a defendre soun dreit. Et fut receu, et pria son age, *et habuit.* Et qaunt a sa tenaunce demeyn il avoyt soun age, purceo qe soun ael morust seisi et il entra com heir. Et qaunt a les auteres ij. ou il suppose par my le[4] bref qu'il tenderent[5] en comune, l'un dit qu'il ne fust pas tenaunt en comune. Et fust ousté de cel excepcioun, purceo qu'il tient le tot. Et demaunda[6] la veue. Et fust ousté, purceo qu'il dit qu'il tient en severaulté et par taunt est il ascerté assés de la demaunde. Et puis dit qe les tenementz furent alienez devaunt statut,[7] prest etc. Et s'il ust primes respondu[8] com tenant del entier saunz[9] excepciouner[10] au bref, *habuisset visum* etc.

32. ANON.[11]

Fourme de doune, ou piert qe si bref abate par jugement et altre serra freshement swi, ne serra my abatu par alienacioun en le mene temps. *Secus*, si par mort de party.

Un bref de fourme de doun en le *descendere*[12] fust porté vers ij. joyntement.

Hunt. Vous portetz vostre bref vers nous en supposaunt qe nous tenoms joyntement.[13] Nous vous dioms qe G. tient iij. acres[14] joint ovesqe sa femme nyent nomé en le bref. Jugement.

[1] *Vulg.* p. 18. Text from *A* : compared with *B*, *D*. [2] *Ins.* qe tient en dowere *Vulg.* *It is interlined in B.* [3] destre *B*, *Vulg.* [4] lour *B*, *D*. [5] tindront *D*. [6] *Ins.* jugement sil ne duist avoir *Vulg.*, *B*. [7] *Om.* devaunt statut *A* ; *ins. B*, *Vulg.*, *D*. [8] receu *A*. [9] saunz *A*. [10] exc' *Vulg.* [11] *Vulg.* p. 19. Text from *A* : compared with *B*, *D*. [12] descendre *B*, [13] en comune *Vulg.*, *B*, [14] *Ins.* de terre *D*,

31. ANON.

Receipt of reversioner. Demurrer of the parol. View.

Two women, with their husbands, brought their writ of formedon in the descender against a woman, who was tenant in dower, and an infant under age, by different precipes, and against Richard and W. The woman who was tenant in dower made default after appearance; wherefore [the petty *cape* issued]. The infant intervened and said that the woman only held in dower by the endowment of his grandfather, and that the fee and the right were in his person; and he prayed to be received to defend his right. And he was received. And he prayed his age and had it. And as to his own tenancy,[1] he had his age because his grandfather died seised, and he entered as heir. As to [Richard and W.] the two other [tenants in the action], one of them said that he was not tenant in common; and he was ousted from this plea because he held the whole. And he then demanded a view; and he was ousted [from this demand] because he [had] said that he held in severalty,[2] and therefore [it appears that] he is sufficiently certified as to what it is that is demanded. And afterwards he said that the tenements were alienated before the Statute [*de donis*]; and this he was ready to aver. And if he had in the first instance answered as tenant of the whole, without excepting to the writ, he would have had a view.

32. ANON.

If a writ be abated by the death of one of two tenants and a new writ is brought against the other, this may be abated by reason of a feoffment made in the meantime.

A writ of formedon in the descender was brought against two persons jointly.

Hunt. You bring your writ against us supposing that we hold jointly.[3] We tell you that one G. holds four acres jointly with his wife, who are not named in the writ. Judgment.

[1] One-third would be held by the doweress, while he would hold the other two-thirds.

[2] By saying, 'I hold in severalty, not in common,' he admitted that he knew what tenements were in demand.

[3] Or 'in common.' These terms are used without much discrimination.

Hedon. Par cest excepcioun ne poet il nostre bref abatre, qar nous portames mesmes tiel bref vers mesmes ceaux *simul cum alio* par qui mort nostre bref se abatit, par quei nous freschement portames cesti bref vers ceaux nometz el bref et que furent nometz en le premir bref.[1] Jugement, s'il par feffement qe se fist en le meen temps pusse nostre bref abatre.

Herri.[2] Aultre choce est par la ou bref se abat par mort de la partie et par la ou il se abat par jugement, qar le bref qe se abat par jugement, et puis la partie freschement rescucite altre[3] bref, en tiel cas nul feffement[4] en le meen temps ne abatera etc.

Hedon. Tenaunt le jour du bref purchacé, prest etc., saunt ceo qe G. ne sa femme rien avoit[5] etc.

33. ANON.[6]

Nuper obiit, ou piert q'il avoyt soun age pur ceo q'il entra mye *immediate.* Secus dount.

Un A. porta soun bref de *nuper obiit* vers D. etc.

Toud. D. est denz age et prie soun age.

Malm. Ceo est un *nuper obiit,* qe est un bref de possessioun porté vers parceneres ou il vous graunt[7] parcenerie. Jugement etc.

Toud. Nostre ael fust seisi xl. aunz et morust seisi, après qi mort nostre piere entra, qi heir nous sumes, com fitz et heir et seisi fust x. aunz, après[8] qi mort nous sumes entré com fitz et heyr, et prioms nostre age.

Pass. Ceo bref est doné en lieu de mortdauncestre vers nostre parcener, en quel bref homme n'avera mye soun age etc., *nec hic.*

Herle. Vous deissez[9] bien si jeo fusse entré *immediate* après la mort la femme[10] de qi vous pernet vostre tittle. Mès ore dioms nous qe nostre ael etc. *ut supra,* après qui mort nostre piere etc., après qui mort nous sumes entré, et nyent après la mort celuy de qi vous pernetz vostre tittle. Jugement, et prioms nostre age.

[1] *Om.* et que . . . bref *B*, *Vulg.* [2] Herin, *Vulg.* [3] novel *Vulg.*, *B.* [4] *Ins.* fait *Vulg.*, *B.* [5] avoient *B*; feme remeignent *D.* [6] *Vulg.* p. 19. Text from *A*: compared with *B*, *D.* [7] grante *B*, *D.* [8] *Om. all after the former* apres *Vulg.* [9] dussez *A*; deissetz *B*, *D.* [10] mort launcestre *B*, *D.*

Hedon. He cannot abate our writ by this exception, for we brought this same writ against these persons jointly with another, upon whose death our writ was abated: and therefore we straightway brought this writ against those who are named in it and who were named in the first writ. Judgment, if by means of a feoffment made in the mean time you can abate our writ.

Stanton, J. There is a difference between the abatement of the writ by the death of a party and an abatement by judgment, for when the writ is abated by judgment and the suit is at once revived by another writ, then it cannot be abated by a feoffment made in the mean time.

Hedon. Tenant on the day of writ purchased without G. or his wife having anything. Ready etc.[1]

33. ANON.

Nuper obiit. Infancy of tenant. Demurrer of the parol.

One A. brought his writ of *nuper obiit* against one D. etc.

Toudeby. D. is under age and prays [that] his full age [may be awaited].

Malberthorpe. This is a *nuper obiit,* which is a possessory writ brought against parceners when the parcenry is conceded. Judgment.

Toudeby. Our grandfather was seised forty years and died seised; and on his death our father, whose heir we are, entered as son and heir and was seised for ten years; and on his death we entered as son and heir; and we pray our age.

Passeley. This writ is given us against our parcener in the place of a mort d'ancestor. In that writ the tenant's full age would not be awaited, nor should it be in this case.

Herle. You would be saying what is correct if the case were that I entered immediately after the death of the woman from whom you take your title. But here we say that our grandfather *ut supra,* and on his death our father etc., and on his death we entered, and not after the death of the person from whom you take your title. We demand judgment and pray our age.[2]

[1] This case is Fitz., *Journes accompts,* 21. Maynard's summary is 'Where the writ abates by the death of a tenant *journies accompt* does not lie.' As to 'where a writ shall be brought by journeys accompts,' see *Spencer's Case,* 6 Rep. 9 b. The phrase, sometimes printed as 'by journey's accounts,' represents *par journées accountées* (or the like) and *per dietas computatas.*

[2] See Coke's exposition in *Markal's Case,* 6 Rep. 3 a, 4 b.

34. ANON.[1]

Cui in vita, ou il fut osté de la vew. *Contrarium lex est.*

Le tenaunt fust ousté de la vewe en un bref d'entré sur le *cui in vita*, purceo qe le tenaunt entra par le baroun, auxi bien com si[2] la femme out[3] porté le bref mesme. Par quai dit fut qe le baroun fust seisi des tenementz com de soun dreyt demene et nent etc. Et le demandaunt dit qu'il n'avoit rien si noun com baroun la femme, prest etc. Et alii econtra.

35. WYCLEWODE *v.* WAUNFORDE.[4]

Dette, ou piert qe tut ne puisse le defendaunt dedire le fait, lez damages serrount taxés par la court.

Richard de Wykewode[5] porta soun bref de dette et counta qe A. et B. sa femme[6] a tort ly deteignent[7] xij. marks, et purceo a tort qe la ou A. se obliga estre tenu a R. en les xij. marks s'il et sa femme ne venissent a la xv. de Paske tiel an etc. a lever une fine de[8] dreit la[9] femme etc., et si il[10] vousist[11] et volleit countredire qu'il serreint[12] tenuz a luy en les xij. marks etc. Et dit qe mesme cesti Richard vient iij. symeynes devaunt le jour en tiel ville[13] devaunt B. et A.[14] ou il dit q'il[15] ne voleit qe cesti fine se leva. Et purceo q'il ne poet[16] dedire q'eux ne vienderent point a xv. jour[17] de Pask de lever la fyn etc., et purceo q'il ne pount dedire le fait,[18] agardé fut qe Richard recovereit ces[19] xij. marks et ses[20] damages taxez[21] par la court.

[1] *Vulg.* p. 19. From *A*: compared with *B*, *D*. [2] *Om.* si *D*. [3] eust *B*; ust *D*. [4] *Vulg.* p. 19. From *A*: compared with *B*, *D*. [5] Wichelwode *B*, *D*. [6] *Om.* et B sa femme, *Vulg.* *In B these words are deleted.* [7] detinet *Vulg.*; detinent *B*, *D*. [8] du *B*, *D*. [9] sa *B*. [10] ele *D*. [11] vensist *Vulg.*, *B*, *D*. [12] serroit *Vulg.*, *B*. [13] vynt etc. *B*, *Vulg.* [14] devant W. et A. *B*, *D*. [15] *So A*, *B*, *D*. [16] pount *B*, *D*. [17] jours, *B*. [18] *Om.* et purceo . . . fait *Vulg.* *Ins.* en la manere com est avant-dite *B*. [19] les *B*; le *D*. [20] ces *A*. [21] tax *A*.

34. ANON.

Entry *sur cui in vita*. The tenant is not allowed a view.

In a writ of entry *sur cui in vita* [1] the tenant was refused a view because he entered by the husband, the case being treated as equivalent to one in which the woman herself brings the writ.[2] So the tenant pleaded that the husband was seised of the tenements in his own right and not [in right of his wife], and the demandant replied that the husband had nothing in the tenements except as husband; and issue was joined.

35. WYCLEWODE *v.* WAUNFORDE.[3]

Damages in debt, where the debt is not denied, are taxed by the court.

Richard of Wyclewode brought his writ of debt and counted that A. and B. his wife wrongfully detain from him twelve marks, and wrongfully because, whereas A. bound himself to be holden to R. in the twelve marks in case he and his wife did not come on the quindene of Easter in such a year to levy a fine of the right of his wife, or if she came and raised objection, then that they would be bound to R. in the said twelve marks etc. And he said that he, Richard, came three weeks before the appointed day in such a town before B. and A.,[4] and he [A.] [5] then said that he would not that such a fine should be levied. And because [A.] could not deny that they did not come at the quindene of Easter to levy the fine etc., and because he could not deny the deed, it was awarded that Richard should recover his twelve marks and his damages taxed by the Court.

[1] A writ lying for the wife's heir where the husband during the marriage has alienated the wife's tenement. The *cui in vita* lies for the widowed wife.

[2] An annotator remarks 'The contrary is law.' The contrary was law in after times. See Sec. Inst. 482, an exposition of Stat. Westm. II. c. 48.

[3] For the record of this case see the Appendix to this book. The report is not very accurate. The wife was not a party to the action.

[4] Perhaps not the defendants, but named witnesses.

[5] Or *she*!

36. ANON.[1]

Clamer franchise.

Nota q'il suffist a chalenger fraunchise a premir jour du plee et nient au premir jour qe lour premir [2] procès vient en court par [3] tut le plee par *Hales*.[4]

37. PYKEREL *v.* DE LA LE.[5]

Assise de novele diseisine, ou piert qe execucioun sur statut marchaunde put estre fait del ancien demene, et s'il soit osté il avera l'assise.

William de Hay [6] porta soun bref de novele diseisine vers Johanne en E.[7] Johanne dit qu'il ne deit estre respoundu,[8] qar les tenementz sount del auncien demein le Roy, et ceo voloms averrir par assise. L'assise dit qe les tenementz furent del auncien demesne le Roi, mès il desoint qe un G. se auoit obligé en [9] statut marchaunde au dit W., par qui [10] William sui [11] d'avoir ses [12] terres etc. Et en le meen temps G. enfeffa Johan etc. Hoc non obstante, le viscounte livera a W. par vertue du bref les tenementz etc., et par quel lyveré il fust seisi un an. Vient Johan le feffé et lui ousta, par quei nous prioms vos descreciouns. Et purceo qe trové fust par assise qe les tenemenz poent estre alienetz d'une mayn en altre et obligetz com tenemenz [13] a la comune ley, et il y ad moult [14] de [15] manier [16] de auncien demein, furent ajournetz en baunk a iij. symaignes de Saint Michael. A quel jour Hervi [17] rehercea le procès, et dit qu'il i ad iij. manere de auncien demene, scilicet, un [18] en bas [19] tenure qi [20] les ad a la volunté le seignour, et la ne poet le tenaunt aliener, ne sa femme dower [21] avoir, ne ses [22] services en certeyn, fors taunt soulement a la volunté soun [23] seignour etc. Une aultre est q'est [24] fraunk sokeman ou il tenent par certeyn services et pount aliener les tenemenz sauntz la volunté le seignour, et par la

[1] *Vulg.* p. 19. Text from *A*: compared with *B*, *D*. [2] *Om.* premir *B*, *D*. [3] pur *B*, *D*. [4] *Add* etc. *Vulg.*, *B*. [5] *Vulg.* p. 19. Text from *A*: compared with *B*, *D*. [6] Lacy *Vulg.*, *B*. [7] Jon de C. *Vulg.*; Johan et C. *D*. [8] resceu *Vulg*. [9] ou *A*. [10] quey *B*. [11] siwist *B*; suwy *D*. [12] ces *A*. [13] ceux *Vulg.*, *B*. [14] meynte *Vulg.*, *B*; monumentz *D*. [15] *Om. B*. [16] manere *B*. [17] Herin *Vulg*. [18] *Ins.* est *B*, *D*. [19] base *D*. [20] qe *B*. [21] vowere *Vulg.*; dowere *B*. [22] ces *A*. [23] le *B*. [24] *Om. B*.

36. NOTE.

Claim of franchise.

Note by *Hales*:—It is enough to claim franchise for the whole plea on the first day of the plea, without [again] claiming it on the first day on which the first process comes into court.[1]

37. PYKEREL *v.* DE LA LE.[2]

A tenement in the ancient demesne held by the free socage tenure and alienable without the lord's leave can be taken in execution under a statute merchant, and if the tenant by statute merchant be thence ejected he can maintain an assize of novel disseisin.

John de la Le brought his writ of novel disseisin against Peter Pykerel. John said that he ought not to be answered, for the tenements are of the King's ancient demesne, and that he would aver by the assize. The assize said that the tenements were of the King's ancient demesne; but they said that one G. had bound himself in a statute merchant to the said John, by reason whereof John sued to have these lands; and in the meantime G. enfeoffed one Peter etc.; but, notwithstanding this, the sheriff delivered the tenements to John by virtue of the writ, and by this livery John was seised; and thereupon came Peter the feoffee and ousted him; wherefore [said the recognitors to the Justices] we pray your opinions. And because it was found by the assize that these tenements could be alienated from hand to hand and could be obliged like tenements at the common law, and there are many kinds of ancient demesne, [the parties] were adjourned into the Bench for three weeks after Michaelmas. At that day Stanton, J. rehearsed the process and said that there are three kinds of ancient demesne, to wit[3] one in base tenure, where [the tenant] has the land at the will of the lord and cannot alienate, and his wife shall not have dower, and his services are not certain but are merely at the will of the lord; and a second kind is where the tenant is a free sokeman and holds by services that are certain, and can alienate the tenements without the lord's consent,

[1] Apparently the franchise here referred to is the right of a lord who intervenes and claims cognizance of an action.

[2] For the record see the Appendix to this volume.

[3] The following exposition seems to be based on Bracton, ff. 7, 209.

court [1] le peti bref de dreit etc. La tierce tenure est la ou le [2] seignour fust seisi du [3] manier et dona les tenementz a tenir de luy par service de chivaler, en quel cas si le tenaunt soit deforcé par le seignour il poet user l'assise et aultre bref vers luy com a la comune ley, mès nient s'il soit deforcé par [4] aultre, sy noun par le petit bref de dreit. Et purceo qe le pleyntif ne demanda fraunctenement fors taunt qu'il avoit levé sus ces chateux par fourme de statut etc., et en fraunc sokage [5] le tenaunt se poet obliger et execution estre [6] a la comune ley,[7] par quei agarde la court qu'il recovere sa seisine et ses [8] damages a xij.[9] li. etc.

38. ANON.[10]

Ael, ou il avoyt la vewe, nient aresteaunt qe le demaundaunt [11] dit qe il [le tenaunt] fut le primer qe soy abaty etc.

En un bref d'ael la vewe fut graunté, nient countreesteaunt qe *Lauf.*[12] dit qe le tenaunt fut le primer qe se abati en les tenemenz après la mort l'ael.[13]

Roustone.[14] Cest excepcioun gist par statut a barrer le tenaunt de soun voucher et nient de la vewe demaunder.

Hervi demaunde [15]: Com bien fust ceo puis la mort l'ael?

Lauf. dit: En temps le Roi H.[16] Et nient countreesteaunt le longe temps, pur ceo qe le bref ne supposa abatement com bref de intrusion ou bref de entré foundu sur la novel diseisine ou aultre bref ou [17] le entré suppose [18] le abatement etc.

39. ANON.[19]

Ael ou termer voucha de soun estat, et fust receu. Le voché vient et countrepleda.

Nota qe en un bref de ael le tenaunt vient en court et dist q'il ne clama rienz [20] en les tenemenz forsqe terme des aunz, et de cel estat

[1] Court *Vulg.* [2] un *B.* [3] dun *B.* [4] *Ins.* un *D.* [5] sokeman *Vulg.*, *B*; sokem' *D.* [6] et avoir execution *B*, *D.* [7] *Om.* ley *A*; *ins. Vulg.*, *B*, *D.* [8] ces *A.* [9] xiij. *Vulg.*, *B*, *D.* [10] *Vulg.* p. 20. Text from *A*: compared with *B*, *D*, *P.* [11] tenaunt *A.* [12] le demaundaunt *P.* [13] End of case, *P.* [14] *Om.* this speech *Vulg.* Expuncted in *B.* [15] *Om.* demaunde *D.* [16] No stop, *A*, *B*, *Vulg.* [17] en *B*, *D*, *Vulg.* [18] supposant *B*, *D*, *Vulg.* [19] *Vulg.* p. 20 Text from *A*: compared with *B*, *D.* In *A* this note appears at a later point. We follow the order of *Vulg.* [20] le tenaunt myst avaunt fait qe

and in this case the little writ of right runs; and the third kind is where the lord was seised of the manor and gave the tenements to hold of him by knight's service, in which case, if the tenant be deforced by the lord, he can use an assize or other writ against him at the common law, but if the tenant is deforced by a third party he has only the little writ of right. And because the plaintiff [in the present case] demanded the freehold merely[1] until he had levied his chattel under the form of the Statute etc., and in free socage the tenant can oblige himself and there may be execution as at common law, therefore the Court awards that [the plaintiff] recover his seisin and damages to the amount of twelve pounds.

38. ANON.

In an action of ael the tenant is allowed a view notwithstanding an assertion that he was an abator.[2]

In a writ of ael a view was granted, notwithstanding that *Laufer* said that the tenant was the first person that abated in the tenements after the grandfather's death.

Roston. This exception lies by Statute [Westm. I. c. 40] to bar the tenant from his voucher, but not to bar him from demanding a view.

Stanton, J., asked how long ago the grandfather's death occurred.

Laufer said: In the time of King Henry.

And, notwithstanding this long time, [the view was allowed] because the writ does not mention an abatement as does a writ of intrusion or a writ of entry founded on the novel disseisin or another writ of entry which supposes an abatement.[3]

39. ANON.

Voucher by a tenant for term of years in an action of ael.

Note that in a writ of ael the tenant put forward a deed which showed that he had only a term of years, and of this estate he was

[1] As to the purposes for which a tenant by statute merchant may be said to have a freehold, see Co. Lit. 43 b.

[2] This case is Fitz., *View*, 138.

[3] The writ of ael states the seisin of the demandant's grandfather (M. Fr. aïeul); but does not charge the tenant with any wrongful entry.

fust receu de voucher soun lessour, qe vient en court et garr[aunty] [1] de gree, et r[espoundy] qe l'ael ne morust pas seisi.

40. ANON.[2]

Dower porté vers gardein, ou piert qe s'il cleime tenir en dower il ly covent dire de qy dowement etc.

Un bref de dower fust porté vers une feme com gardeyn des terres et des [3] tenemenz Walter etc. La femme dit q'ele ne tient pas les tenemenz com gardeyn, einz en dower. Jugement du bref.

Hedon. De qi assignement? Qar il covent dire qe l'enfaunt est [4] en vostre garde etc. et dedeinz age, par quai il ne [5] vous poet pas dower assigner.

Par quai la femme fut chacé par la court a dire [6] par qi assignement.

Lauf. Un G. de Gersal fust seisi de la garde etc. et la dowa par soun assignement, et puis graunta la garde a mesme la femme etc. desqes al age etc.; et issint tient ele en dower et est gardein assigné par le graunt G. etc. Jugement etc. si etc. Et qaunt as tenemenz etc. qe eux [7] lui furent assignez en dower etc. enz ceo q'ele purchacea la garde du corps [8] etc.

Hedon. Qe ceaux tenemenz ne luy furent assignetz en dower enz ceo [9] q'ele purchacea la garde des tenemenz q'ele tient com gardeyn assigné, prest [10] etc.

Et alii econtra.

41. ANON.[11]

Replevvie, ou le pleyntif avoyt eyde de sa femme avaunt q'il avoyt pledé a l'avowerie.

Un J. se pleynt qe T. et J. sa femme [12] etc. a tort prist v. chyvals [13] par un bref et v. chyvals par iij.[14] altres brefs. Et counta sur chescun bref de la prise en diverse temps.

volleit q'il avoit *B*. *Sim. D*; *but* navoit. [1] graunte *A*. [2] *Vulg.* p. 20. Text from A: compared with *B*, *D*, *P*. [3] ces *A*; des *B*, *D*. [4] De qi assignement il covent dire qar il est *P*. [5] age et qil ne *B*. [6] *Om.* a dire *A*; moustrer *B*, *D*. [7] *Om.* eux *D*. [8] temps *A*. Jugement etc. et l'assignement fut fet avant ceo qe ele purchaca la garde du corps *P*. [9] *Om.* ceo *B*. *Vulg.* [10] tenementz de celui qe fuist gardein prest *B*, *Vulg.* [11] *Vulg.* p. 20. Text from *A*; compared with *B*, *D*, and a brief note in *P*. [12] T. de C. *A*; T. de C. etc. *D*. [13] un chyval *B*, *Vulg.* [14] iiij. *B*, *D*, *Vulg.*

received to vouch his lessor. The lessor comes into court, warrants without compulsion, and answers that the ael [grandfather of the demandant] did not die seised.

40. ANON.

Action of dower against a woman as guardian. She claims to hold in dower. She must say who assigned her dower.

A writ of dower was brought against a woman as guardian of the lands and tenements of Walter etc. The woman says that she holds the tenements not as guardian but in dower, and prays judgment of the writ.

Hedon. You ought to say by whose assignment, for the infant is in your ward etc. and under age, so that he could not assign you dower.

Therefore the woman was driven by the Court to say by whose assignment [she held her dower].

Laufer. One G. of Gersal was seised of the wardship and endowed her by his assignment, and afterwards granted the wardship to her etc. to hold until the full age of the heir; and thus she holds in dower and is the guardian by G.'s grant. And as to these tenements, they were assigned to her in dower before she purchased the wardship of the body etc.

Hedon. These tenements were not assigned to her in dower before she purchased the wardship of the tenements which she holds as guardian by assignment.

Issue joined.

41. ANON.

A plaintiff in replevin is allowed aid of his wife before pleading to the avowry.

One J. complained of T. and J. his wife [and others] that wrongfully they took a horse—this by one writ—and four [1] other horses, bringing a different writ for each. And in counting on each writ he mentioned a different time.

[1] Throughout there is some uncertainty as to the number of horses.

Willebi avowa toutz les prises pur T. et J. sa femme et conust[1] pur toutz les aultres, et par la resoun q'un F. et sa femme tienent de lui et de sa femme[2] et de A. et de sa femme com del dreit les femmes[3] par homage et fealté et par viij. den. par an et une peyre des gauntes et seute a lour court etc., des queux services E. piere les femmes, qi heirs eaux sount, fut seisi par my la mayn B. piere la femme[4] com par my etc.; et pur la seute arere avowe il la prise de v. chyvals sur F. et sa femme en soun noun,[5] et conut par sa femme et pur ses[6] parceneres etc. com del dreit A. etc. Et qaunt a les iij.[7] chyvals pur homage arere. Et qaunt a un chyval pur les viij. den. arere par ij. aunes. Et qaunt a les gaunz etc.

Lauf. Qaunt a la feaulté et al homage, nous les avoms tendu avaunt la prise, et umqore sumes prest a faire si la courte agarde qe le baroun les poet receivre en absence de la femme. Et qaunt a les aultres services, nous trovames nostre femme deschargé et nous ne poumes sauntz li respoundre, et prioms heide de luy.

Et ideo consideratum[8] fuit quod mulieres[9] venirent[10] ex utraque parte. Mès *Lauf.* dit qe sa protectioun[11] fut sur le[12] tendere[13] des services[14] purceo qu'il bie recoverir damages pur le tendere etc.

{*Toud.* La fealté et le homage avoms souvent tendu, et unqòre sumes prest a fere lez, et nous ne pooms charger ne descharger etc., saunz etc., et prioms eyde. (Et fut graunté.)}[15]

42. ASSHEWELL *v.* STANES.[16]

Besael, ou piert qe bastardi alegé en la persone cely par my qy le demaundaunt ad counté sera trié en ceste court.

Un Paul porta soun bref de *proavo* et fit le descente de Sampson a Roggier, de Roggier a Robert,[17] de Robert[18] a P.[19] q'ore demaunde com fitz e heir.

Hunt. De Roggier a Paul ne poet nul descente estre fait par my Robert[20] soun piere, qar nous vous dyoms qe Robert fust bastard etc.

[1] *Om.* conust *A*, *D*; *interlined B.* [2] *Ins.* come de dreit sa femme *B.* [3] *Om.* com . . . femmes *B*, *Vulg.* [4] *Ins.* F. *B*, *D*, *Vulg.* [5] novel *Vulg.* [6] ces *A.* [7] *Om.* iij. *A.* [8] concessum *B*, *D*, *Vulg.* [9] *Om.* mulieres *B*, *D*, *Vulg.* [10] venerunt *A*; venirent *B*, *D.* [11] *Sic A*, *B*, *Vulg.*; protestacion *D.* [12] *Om.* le *B*, *Vulg.* [13] tendre *B*, *D.* [14] *Ins.* et est causa *B*, *D*, *Vulg.* [15] In *P* this takes the place of the two preceding paragraphs. [16] *Vulg.* p. 21. Text from *A*: compared with *B*, *D.* [17] Rogier *B*, *D*, *Vulg.* [18] R. *B*, *Vulg.*; Rogier *D.* [19] Poal *B*; Paul *D.* [20] Rogier *B*, *D.*

Willoughby avowed all the takings for T. and J. his wife and made cognizance for the other defendants, and as reason for the takings he said that one F. and his wife hold of him and his wife and of one A. and his wife, in right of the wives, by homage and fealty and eightpence a year and a pair of gloves and suit to their court etc., of which services E., father of the wives, whose heirs they are, was seised by the hand of B., father of F.'s wife, as by [the hand of his very tenant], and for the suit [of court] in arrear he avows the taking of the five horses upon F. and his wife in his right; and [T.] makes cognizance for his wife, and for her parceners as in right of A. [and his wife]. And as to the three horses, for homage arrear. And as to one horse, for the eightpence arrear. And as to the gloves etc.

Laufer. As to the homage and fealty, we tendered them before the taking and are still ready to do them if the Court awards that the husband can receive them in his wife's absence. And as to the other services, we found our wife discharged [1] and cannot answer without her, and we pray aid of her.

And so it was adjudged that the women on both sides should come. But *Laufer* said that he pleaded the tender of the services by way of protestation,[2] for he was hoping to recover damages by reason of the tender etc.

{*Toudeby.*[3] We have often tendered the homage and fealty and still are ready to do them, and we cannot charge or discharge the tenements without our wife, and we pray aid. (And it was granted.)}

42. ASSHEWELL *v.* STANES.[4]

The question whether a dead person, through whom the demandant claims, was legitimate or bastard, is sent to a jury and not to the ecclesiastical court.

One Paul brought his writ of besaiel and made the descent from Sampson to Roger, from Roger to Roger, from Roger to Paul, the demandant, as son and heir.

Hunt. No descent can be made through Roger his father, for we say that Roger was bastard.

[1] In other words, his wife was not performing these services when he married her. So a parson will say, 'I found my church discharged,' when he is praying aid of patron and ordinary.

[2] But the text is not certain. Some MSS. speak of 'protection.'

[3] From another version of the case.

[4] Proper names from the record.

Friss. Roggier fitz Sampson[1] prist femme en le counté de Surr[ie] et engendra Robert[2] etc., et mulleré,[3] prest etc. par paiys du counté ou il fust nee etc.

Hunt. Cest averement apent a court christiene. Jugement etc.

Malm. Robert[4] est mort, par quai l'enqueste deit estre prise en cest court. (Et a ceo fust il chacé par agarde.)

Hunt. Donqe dioms nous qe le premir Roggier esposa une C. et engendra de lui une Alice et morust vivaunt Sampson, issint qe Paul, q'ore est tenaunt par sa garr[auntie] etc.,[5] par quay nous prioms paiys du counté ou les tenemenz sount.

Hervi agarda paiys d'une counté et d'aultre etc.

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 296d, Hertf.

Paulinus of Asshewelle demands against John of Stanes a messuage, a mill, four-score acres of land, ten acres of meadow, and thirty shillings'-worth of rent in Asshewelle and Henxteworthe, whereof Sampson le Joefne [the Young], great-grandfather of the demandant, was seised in his demesne as of fee on the day on which he died. The count traces the descent of the fee from Sampson to Roger as son and heir, from him to Roger as son and heir, from him to the demandant as son and heir.

The tenant on an earlier day said that he held the tenements only for the term of his life of the inheritance of one John, son of Roger of Bampton, and vouched John to warranty. The vouchee now comes by summons and warrants the tenant in form aforesaid, and says that the demandant can claim no right by means of the said Roger, son of Roger, since he was a bastard; and this he is ready to aver etc. (*Note continued on the opposite page.*)

43. ANON.[6]

Replegiari, ou homme pura mye desclamer en party al avowerie.

Un *replegiari* fust porté vers T. etc. L'avowrie fust fait a iij. prises, e par la resoun qe[7] le pleyntif tient de luy un gardyn, c. acres de terre, xx. acres de boys, et x. acres de pree par homage et feaulté

[1] Rog' piere Rog' *B*, *D*. [2] Rogier *B*; Rog. *D*. [3] muller' *A*; moillere *B*. [4] Rog.' *D*. [5] issint qe R. aultre issue navoit qe C. etc., *Vulg.*, *B*; *D agrees with A, but om.* etc. [6] *Vulg.* p. 21. Text from *A*: compared with *B*, *D*, *R*. [7] qi *A*.

Friskeney. Roger, son of Sampson, took a wife in the county of Surrey and begat Roger etc., and he was legitimate. Ready to aver this by a jury of the county in which he was born.

Hunt. This averment belongs to the Court Christian. Judgment etc.

Malberthorpe. Roger is dead, so the inquest should be taken in this Court. (And the tenant was driven to this by the award of the Justices.)

Hunt. In that case we say that Roger espoused one C. and begat on her one Alice and died seised in the lifetime of Sampson, and had no other issue than Alice.[1] Wherefore we pray a jury of the county where the tenements are.

STANTON, J., awarded a jury of the one county and of the other etc.

Note from the Record (*continued*).

The demandant says that Roger, his father, was legitimate. For he says that Roger, his [the demandant's] grandfather and father of the said Roger, espoused one Matilda his wife at Terryngge [Tarring] in Sussex; and that Roger, the demandant's father, was born and bred (*nutritus*) in lawful wedlock and was holden to be legitimate (*et pro legitimo tentus*): and he prays that this be inquired by the country of the said neighbourhood (*de predicto visneto*) of Terrynge.

The sheriff of Sussex is ordered to cause twelve of the neighbourhood of Terryngge, and likewise the sheriff of Hertfordshire is ordered to cause twelve of the neighbourhood of Asshewell and Henxteworthe,[2] to come here on the quindene of Easter.

43. ANON.

In answer to an avowry a plaintiff unsuccessfully endeavours to plead that he holds less land and by less service than the avowant has mentioned, and does not hold of the avowant the place where the distress was made.

A replevin was brought against T. etc. The avowry was made for three takings, and the reason given was that the plaintiff holds of the avowant a garden, one hundred acres of land, twenty acres of wood, and ten acres of meadow by homage and fealty and twelve

[1] The text is not very good and is not borne out by the record.

[2] Ashwell and Hinxworth are neighbouring villages.

et xij. den. par an, et xxiij. den.[1] al escue qaunt etc., et seute a sa court etc., des queux services celuy qe avowe fust seisi par my la mayn le pleyntif etc., et pur ceo qe la fealté fust arere si[2] avowe il un prise, et pur homage ariere si avowe il la prise de vj. vaches[3] etc.

Roston. Nous ne tenoms de luy forsqe vj. bovés de terre et demi[4] tantum, et ceo par homage et feaulté et par xij den. par an e xxv. den.[5] al escue sauntz plus[6] services. Et vous dioms outre qe[7] les lues ou les prises furent fetes ne sount[8] pas parcel de ceaux tenemenz qe nous tenoms de vous. Jugement, si en tiel lieu pur ceaux services pussez sur nous avowrie faire.

Friss.[9] Donqe desclamez vous a tenir de nous le lieu ou la prise fust fait.

Roston. Nous ne poums pas disclamer, qar nous avoms conu a tenir de vous partie des tenemenz par les services qe nous avoms conu. Par quai nous ne poms pas desclamer si ne fut a tot l'avowrie.

Friss. En taunt com vous dites qe vous tenez le leue d'un aultre ou la prise etc., ceo soune[10] plus naturelement en un desclamer qe en fourme de r[espouns]; par quai nous prioms qe la court lour chace a aultre r[espouns] ou qu'il descleim exprissement. Estre ceo, celuy qi dit[11] q'il ne tient pas de nous par taunt de services com nous avoms avowé qe est aultre[12] issue du plee, par quai il ne poet tenir ambedeux etc.

Roston. Si jeo di[13] qe jeo ne[14] tienk de vous forqi par taunt des services,[15] ceo n'est forsqe un protestacioun fait a la court de nostre tenaunce[16] pur le retorn. Mès donqes[17] pledomps nous a ceo qe nous ne tenoms pas le lieu[18] de vous, enz de un Robert de D.,[19] par quai ceo qe nous traversoms est qe le leu etc.[20] n'est pas tenu de vous, ensz de un aultre, q'est contrariaunt a vostre avowrie, prest etc.[21]

Berr. Qe vous tenetz de un aultre ceo n'est pas[22] r[espouns] a sa avowrie. Par quai il covent qe vous desclametz ou qe vous donetz aultre r[espouns], qe ceo est la nature[23] del avowrie.[24]

Rouston issit d'enparler et ne revient point.[25] Par quai retourn des avers fust agardé etc.

[1] *Om.* den. *A.* [2] sil *A.* [3] dune vasche *B, D, Vulg.* [4] *Om.* et demi *B, Vulg.* [5] *Om.* den. *Vulg.* [6] *Ins.* des *B.* [7] qi *A.* [8] ne sount *B, Vulg.*; nest *A, D.* [9] *Om.* this speech and the next, *B, Vulg.* [10] souve *Vulg.* [11] Estre ceo qant il dit *R.* [12] avowe cest autre *R.* [13] Ceo qe jeo di *R.* [14] *Om.* ne *B, D, Vulg.* [15] *Ins.* et *A.* [16] tenaunt *Vulg.*; tenaunce, *B, D.* [17] retourn, et pur coe nous *B, Vulg.*; retourn, et dount *R.* [18] *Om.* ceo . . . lieu *D.* [19] *Ins.* que mesme cel leu etc. si tient il de nous [vous ?] *B, Vulg.* [20] *Om.* est qe le leu etc. *A, D*; *interlined in B.* [21] pledoms a ly qe nous ne tenoms pas le leu etc. issi sumes a travers savowere *R.* [22] autre cest *B, Vulg.* *Om.* pas *D.* [23] qe cest a la nature *B, Vulg.* [24] desclamez ou qe dies autre chose *R.* [25] End in *R.*

pence a year and twenty-three pence for scutage when [scutage is at forty shillings on the fee] and by suit to his court etc.: of which services the avowant was seised by the hand of the plaintiff etc.; and for fealty arrear he avows one taking, and for homage arrear he avows the taking of six cows etc.

Roston. We only hold of him six bovates and a half of land, and this by homage and fealty and twelve pence a year and twenty-five pence for scutage without more. And we say that the places where the takings were made are not part of the tenements that we hold of you. Judgment, whether in that place you can make avowry upon us for those services.

Friskeney. Then you disclaim holding of us the place where the taking was made.

Roston. We cannot disclaim, for we have confessed holding of you part of the tenements by services which we have confessed. We could not disclaim unless our disclaimer went to the whole avowry.

Friskeney. Inasmuch as you say that you hold of another the place where the taking [was made], that naturally sounds more like a disclaimer than like an answer. Wherefore we pray that the Court will drive you to another answer or to an express disclaimer. Besides, what you say about not holding of us by as much service as that for which we have avowed makes for another issue of the plea. Wherefore you cannot hold to both allegations.

Roston. If I say that I do not hold of you save by such and such services, that is only a protestation of our tenancy made to the Court in order that we may have a return [of our beasts]; but now our plea is directed to this point—namely, that we do not hold the place [where the taking was made] of you, but hold it of Robert of D.,[1] so that we are traversing your avowry by saying that the said place is held not of you but of another, for that contradicts your avowry. Ready etc.

Bereford, J. To say that you hold it of another is no answer to his avowry. Therefore you must either disclaim or give some other answer, for such is the nature of the avowry.

Roston went out to imparl, and did not come back. Therefore a return of the beasts was awarded etc.

[1] One version seems to allege that Robert is mesne between plaintiff and defendant.

44. ANON.[1]

Replegiari, ou il avowa sour estraunge, et le pleintif avoit eide de sa femme par mettre avaunt chartre de joint feffement fait par cely sour qy il avowe.

Un *repleggiari* fust porté vers B. ou l'avowrie fust fait sur un estraunge.[2] Le pleyntif dit qe luy et sa femme furent jointement feffez[3] de ceaux tenementz etc. a tenir de chief seignourage du fee, saunz qi[4] nous ne poums[5] respoundre ne les tenemenz charger, et prioms heide de luy.

Rouston. Vous estes tot estraunge a nostre avowrie et auxint celuy[6] de qi vous priez heide etc.

Hedon. Si nostre femme fust icy nous vous purroms[7] chacer de faire vostre avowrie sur nous etc. com sur ceaux qe sount feffez a tenir du chief seignourage etc., et sauntz luy ceo ne poums nous faire. Jugement si nous etc.

Et habuit[8] auxilium. Et in consimili casu[9] fut graunté, mès le baroun fut chacé a moustrer fait a la court de testmoygner le feffement avaunt q'il avoit heide etc.[10]

45. ANON.[11]

Resomounce ou il avoyt gagé la ley avaunt qe la parole demoura sauncz our. Ou piert qe si le demaundaunt seit essonié après la ley gagé et[12] la chose alegé par le tenaunt en propre persone, la defaute est savé.

Un bref fut porté vers un homme en temps le Roi qe mort est, qi gaga sa ley de noun[13] somounse par attourné, et[14] avoit jour de faire sa ley. Le poer le'tourné fust esteint,[15] par quai il vint en propre persone prest a faire sa ley. A quel jour le demaundaunt se fist essonier e avoit jour[16] outre etc. En le meen temps le Roi morust, par quai le tenaunt fut resomouns. A quel jour le tenaunt se fist essonier e voit jour outre etc. Il ne vient point, enz vient un Hugh

[1] *Vulg.* p. 21. Text from *A*: compared with *B*, *D*, *R*. [2] un Estevene *R*. [3] jointfeffez *B*, *Vulg*. [4] quei *A*. [5] il ne poet *D*. [6] auxi est cele *R*. [7] porreioms *D*. [8] habuit *B*, *D*; habeant *A*. [9] *Om.* casu *A*, *D*. [10] et ceo ne pooms fere saunz ly. Jugement si nous ne devoms eyde aver. Et fut chace a moustrer especiaulte. Et habuit auxilium. *R*. [11] *Vulg.* p. 21. Text from *A*: compared with *B*, *D*. [12] *Om.* et *A*. [13] novel *Vulg*. [14] *Om.* et *A*, *B*, *D*, *Vulg*. [15] atteynt *D*. [16] cour *Vulg*.

44. ANON.[1]

A man brings replevin. The avowry is upon a stranger. The plaintiff has aid of his wife, but only after producing a charter showing a joint feoffment.

Replevin brought against A.; avowry upon a stranger; the plaintiff says that he and his wife were jointly enfeoffed of the tenements to hold of the chief lord of the fee, and without her he cannot answer or charge the tenements; and he prayed aid of her.

Roston. You are a total stranger to our avowry, and so is she of whom you pray aid.

Hedon. Were our wife here, we could drive you to avow upon us as upon those who are enfeoffed to hold of the chief lord etc., and without her we cannot do that. Judgment etc.

Aid was granted. It was also granted in a similar case.[2] But the husband, before he had aid, was driven to show to the Court the deed which witnessed the feoffment.

45. ANON.

Punishment of an attorney for acting after his power is extinct. His power is extinct when he has waged law for his client. The effect of a demise of the Crown illustrated.

In the late king's time a writ was brought against a man who by attorney waged his law that he had not been summoned; and he had a day to make his law. The power of the attorney was extinct, so [the tenant] came in person ready to make his law. At that day the demandant had himself essoined and had another day given him. Meanwhile the king died. So the tenant was resummoned. And then the tenant had himself essoined and had another day given him. Then he did not come; but one Hugh of Grantchester, his attorney,

[1] This case is Fitz., *Ayde*, 159.

[2] In one of our manuscripts there is no reference to any 'similar case.' There it is made clear that in the present case a deed had to be produced.

de Grauncestre soun atourné et[1] se proferi[2] com atourné com celuy qe fust fait attourné avaunt la ley gagé. Et dit qe la defaute fust savé[3] par taunt qe le demaundaunt se fist essonier au jour qaunt[4] le tenaunt fust prest a fair sa ley. Et ceo est ley, si le tenaunt ust aleggé ceo en propre persone. Par quai il priast qu'il countast vers luy.

Pass. Nous sumes ore[5] com si le tenaunt ust fait defaute en temps qu'il dust avoir fait sa ley. Mès s'il oust etc.[6] nous averoms seisine de terre. Par quai nous prioms ore issi par defaute après resomouns.[7]

L'attourné dit *ut prius.*

Hervi.[8] Au temps qe vous gagastes la ley pur[9] vostre mestre, comaundé fust qu'il vensist mesme a fair la ley etc. Par quai vostre pouer fust esteint. Et d'aultre part vous serrez digne d'avoir la penaunce. Et purceo gardez vostre jour d'oyr[10] vostre jugement Lundy etc. de la defaute vostre mestre e vostre penaunce[11] demene.

A quel jour il ne se proferi point. Par quai le graunt *cape* fust agardé com pur defaute après resumounz. Et ceo est merveille, pur ceo qu'il deyvent[12] estre en mesme l'estat etc. et[13] l'attourné se absenta de gree pur eschuer la[14] penaunce qe lui duist avoir esté ajuggé[15] per concilium[16] etc.

46. MEKE *v.* NORFOLK.[17]

Dower, ou piert qe receyte de dower de mesme cely etc. n'abate my le bref de tenemenz demaundez devenuz en sa mayn pus l'assignement, et ou el avera mye dower de exchaunge d'un part et d'altre.

Une Alice porta soun bref de dower *unde nichil habet* vers Johan fitz Thomas et demanda la tierce partie de iij. mees et de iij. bovés de terre etc.

Roustone pur Johan. Vous estes dowé de nous mesmes en mesme la ville. Jugement du bref.

Lauf. Par taunt etc., qar nous vous dioms qe en temps qe vous

[1] *Om.* et *A*, *D*. [2] profri *B*, *D*. [3] sauve *B*. [4] qe *A*; qaunt *B*, *D*. [5] *Ins.* en lestat *B*, *D*, *Vulg*. [6] mes sil out al ceo temps fet defaute *B*, *Vulg*. [7] ore seisine de terre depuis etc. *B*, *Vulg*. [8] Herin *Vulg*. [9] par *A*; pur *B*, *D*. [10] davoir *B*, *Vulg*.; oyer *D*. [11] *Apparently* pere *A*; penaunce *B*, *D*, *Vulg*. [12] doinent *Vulg*. [13] *Om.* et *B*, *D*. [14] sa *B*, *D*, *Vulg*. [15] *Om.* qe . . . ajuggé *B*, *D*. [16] consilium *B*, *D*. [17] *Vulg*. p. 22. Text from *A*: compared with *B*, *D*, *R*.

proffered himself as attorney since he had been attorned before the wager of law. And he said that the default was salved since the demandant had himself essoined on the day when the tenant was ready to make his law. And this would be law if the tenant in his proper person had alleged it. So [the attorney] prayed that [the demandant] might count against him.

Passeley. We [for the demandant] are in the same position as if the tenant had made default at the day for making his law, and in that case we should have had seisin of the land. Therefore we now pray seisin of the land as upon a default after resummons.

The attorney repeated what he had said.

Stanton, J. At the time when you waged law for your master it was commanded that he should come in person to make his law; and thus your power was extinguished. You deserve punishment. Therefore keep your day on Monday etc. to hear judgment as to your master's default and your punishment.

On that day he did not proffer himself. Therefore the great *cape* issued as upon a default after resummons. And this is strange, for they ought to be in the same condition [as that in which they were before the demise of the Crown]. And the attorney absented himself purposely to avoid the punishment which would have been awarded him by the Council.[1]

46. MEKE *v.* NORFOLK.[2]

Though *A. B.* has already assigned dower to a widow, she may still demand from him dower of other lands in the same vill which have since come to his hands. *Semble* it is a good plea that the widow is endowed out of lands given in exchange for the lands in which she demands dower. *Qu.* whether there can be an exchange of an estate for life and an estate in fee.

One Alice brought her writ of dower *unde nichil habet* against John son of Thomas, and demanded the third part of three messuages and of three bovates of land etc.

Roston, for John. You are endowed by ourselves in the said vill. Judgment of the writ.

Laufer. For all that [you shall not abate our writ], for we tell

[1] Or 'by the counsel [of the court].' The two words *consilium* and *concilium* were not distinguished. Another version perhaps tells us that the attorney absented himself 'by counsel,' and this may mean 'by the advice of counsel.' The MSS. do not suggest that this criticism is no part of the original report.

[2] Proper names from the record. This case is Fitz., *Dower*, 124.

assignastes dower si ne fustes vous mi seisi de ceaux tenemenz dount nous demaundoms ore dower, enz fust un Thomas a terme de sa vie du lees nostre barroun, issint qe [1] les tenemenz sount [2] devenuz en vostre seisine pus ceo temps par la mort Thomas. Jugement [3] si etc.

Et fust ousté par *Stauntone*.[4]

Rostone. La ou ele demaunde vers nous dower de iij. mees et de iij. bovés de terre, nous vous dioms qe [5] nous ne tenoms qe [6] ij. mies et ij. bovés de terre etc. Et en droit del un mies et del un bové de terre, nous dioms qe soun baroun ne fust unqes seisi issint qe dower la pout. Jugement etc. Et en droit del autre mies et bové de terre, nous dioms qe Thomas soun baroun preist un mies et xl. acres de terre pur ceo mies et bové de terre a terme de la vie [7] Thomas, de qi ele demaunde ore dower, en noun d'eschaunge, de quil mies et xl. acres etc. vous estes seisi ore de vostre dower. Jugement, si de tenemenz pris en eschaunge, de quai etc., pussez dower demaunder.[8]

Lauf. Sire, nous [9] conissoms point le [10] eschaunges etc., enz demaundoms jugement de la conissaunce depus qe le lees fust fait [11] d'une partie a terme de vie et d'aultrepart en fee, qe n'est mye naturelement eschaunge. Jugement etc. si tiel permutacioun,[12] qe n'est proprement eschaunge, nous deyve [13] de nostre dower barrir.[14]

Hervi. Demorrez la donqes etc.

Lauf. ne osa [15] pas, set dixit [16] qe Thomas soun baroun purchacea le mies et les xl. acres de terre de T. de E. pur xlij. marks, saunt ceo qe nul covenaunt i avoit de cele bové de terre etc.;[17] mès pus li lessa cele bové de terre a terme de sa vie pur xx. marks, et issint nient en chaunge,[18] prest [19] etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 420d, York.

Robert Meke and Cicely his wife demand against Nicholas of Norfolk and Ellen his wife a third part of three messuages and of four bovates of land in Skelton in Galtres as Cecily's dower by the endowment of Thomas le Lardiner, her first husband.

The tenants say that as to one messuage and two bovates of land Cecily

[1] qi *A*. [2] *Ins*. ore *B*, *Vulg*. [3] *Om*. jugement *A*. [4] ouste etc. *B*, *Vulg*. Et fut agarde qil respoint par Staunt. *R*. [5] quei *A*. [6] qi *A*. [7] *Om*. Thomas . . . vie *B*, *Vulg*. [8] nous vous dioms qe T. son baroun dona ceux etc. dount etc. ele demaunde dower pur autrez tenementz en eschanges [des queux] ele est douwe. Jugement etc. *R*. [9] *Ins*. ne *B*, *Vulg*. [10] les *B*, *D*. [11] se fit *B*, *D*, *Vulg*. [12] mutacioun *R*. [13] doyne *Vulg*. [14] harrir *A*. [15] ne seit *R*. [16] mes dit *B*, *R*, *Vulg*. [17] sanz ceo qil yavoit nuls eschaunges *R*. [18] nient eschaunge *B*, *Vulg*. [19] prirost (?) *A*.

you that at the time when you assigned dower you were not seised of the tenements whereof we now demand dower, but one Thomas was seised for the term of his life by the lease of our husband, so that the tenements have come into your seisin since that time by the death of Thomas. Judgment etc.

And [the tenant] was ousted from this plea by STANTON, J.

Roston. Whereas she demands against us dower of three messuages and of three bovates of land, we only hold two messuages and two bovates of land etc. And as to one messuage and one bovate, we say that her husband was never seised so that he could endow her. Judgment etc. And as to the other messuage and bovate, we say that her husband, in exchange for this messuage and bovate which he demised for his life, took a messuage and forty acres whereof she now is seised as of her dower.[1] Judgment, whether she can demand dower of tenements given in exchange for those of which [she is already endowed].

Laufer. We do not admit the exchange etc.; but we demand judgment upon their admission that there was a lease for life on the one side and an alienation in fee on the other, for such a transaction has not the nature of an exchange. Judgment whether such a 'permutation,' which is not properly an exchange, can bar us from our dower.

STANTON, J. Demur there then etc.

Laufer dared not demur there,[2] but said: Thomas, her husband, purchased the messuage and forty acres of land of T. de E. for forty-two marks, without there being any covenant concerning this bovate; but afterwards he demised this bovate for the term of his life for twenty marks, and so there was no exchange. Ready etc.

Issue joined.

Note from the Record (*continued*).

ought not to have any dower. For they say that Thomas le Lardiner, her late husband, received forty acres of land in Skelton from one Thomas le Lardiner of Skelton to hold to him and his heirs in exchange for the said messuage and land to be held for the lifetime of Thomas le Lardiner of Skelton; and that Cecily after the death of her first husband was seised of the dower pertaining to her in the said forty acres, which came to her husband by the exchange in manner aforesaid: and they demand judgment.

The demandants say that the said forty acres did not come into the

[1] This seems to be the meaning of a somewhat obscure passage when it is placed beside the record.

[2] *Semble* that in later days this would have been a good contention. See Lit. sec. 64-5; Co. Lit. 51*a*: 'In exchanges it behoveth that the estates which both parties have in the lands so exchanged be equal.'

Note from the Record (*continued*).

seisin of Cecily's first husband by any exchange; but that he bought them from Thomas le Lardiner of Skelton for forty-two marks, of which he paid twelve marks on the livery of seisin, and for the residue of the money he, at the prayer and request of Thomas le Lardiner of Skelton, demised to him the said messuage and two bovates with other lands in the said vill. So they say that the first husband came to the forty acres, not by any exchange, but by purchase as aforesaid: and they pray that this be inquired by the country.

Issue is joined.

As to the residue, the tenants plead non-tenure except of one messuage and two bovates; and concerning these they say that the first husband was never seised so that he could endow.

Issue is joined. The process is continued until the quindene of Michaelmas in 4 Edw. II. [A.D. 1310], when a verdict is sent in by Henry le Scrope, who, with John of Doncaster as associate, took the verdict at York

47. TALEWORTHE *v.* LAUFARE.[1]

Trespas, ou il avowa par cause de le couper, et umquore chacé a respoundre a ly a dire nos arbres et nent le vos.

Un bref de trespas 'quare vi et armis etc. arbores ipsius A. crescentes succidit et asportavit etc.' fut porté vers R.[2] et Johan.

Lauf. defendi tort et force et le venire[3] a force et armes et quantqe etc. et les dammages etc. Et vous dioms qe W. de Sottone pria congé du Roy de couper vj. acres de boys en soun soil demene, q'est denz la forest le Roi, et avoit graunt du Roi, issint qe ceo ne fust mye a damage du Roy, par quai il siwit un bref de la chauncelerie d'enquere etc., par quel enqueste etc. fust trové qe ceo ne serroit mye a soun damage etc., issint qu'il avoit le congé le Roi et comissioun,[4] qi ci est, q'il poet abater[5] ceo boys etc. en le[6] soil etc. dedenz la foreste; le quel W. de S. nous vendy ceo boys ove fraunk entré et issue sauntz estre destourbé; et issint l'avoms coupé et enporté nos arbores com bien nous lust sauntz tort etc.

Willebi. Nos arbres et nent les vos, prest etc.

Herle. Il dit 'arbores suos crescentes,' et le[7] 'crescentes' suppose les arbres crestre[8] en soun soyl demene, par quai il semble[9] q'il ad

[1] *Vulg.* p. 22. Text from *A*: compared with *B*, *D*. [2] Richard *B*, *Vulg.* [3] venir *B*, *D*. [4] *Om.* et comissioun *A*; *ins. B*, *Vulg.* [5] abatre en *B*, *D*. [6] son *B*. [7] lui *B*, *D*, *Vulg.* [8] estre *Vulg.* [9] *Rep.* il semble *A*.

Note from the Record (*continued*).

on [Aug. 3] the Monday after the feast of St. Peter at Chains in the said year. The jurors say upon their oath that the first husband purchased the forty acres from Thomas le Lardiner of Skelton, to hold to him and his heirs for ever, and not in exchange for the messuage and two bovates as the tenants say. As to the residue also, the verdict is for the demandants. The judgment is that the demandants recover their seisin together with damages taxed by the jurors at a hundred shillings, and that the tenant be in mercy.

The important words in the verdict run as follows: 'Dicunt quod predictus Thomas le Lardiner quondam vir predicte Cecilie perquisivit predictas quadraginta acras terre de predicto Thomas le Lardiner de Skeltone tenendas sibi et heredibus suis imperpetuum, et non in eschambium pro predictis mesuagio et duabus bovatis terre sicut predicti Nicholas et Elena dicunt.'

47. TALEWORTHE *v.* LAUFARE.[1]

Qu. whether the assertion that certain growing trees are my trees implies an assertion that they are growing upon my soil.

A writ of trespass was brought against two defendants demanding why with force and arms etc. they cut down and carried away the growing trees of [the plaintiff].

Laufer defended tort and force and the coming with force and arms and all [that is against the peace] and the damages. And (said he) we tell you that W. of Sutton prayed the king's leave to cut six acres of wood on his own soil, which is within the king's forest, and had a grant from the king, with a proviso that this should be done without damage to the king; and therefore he sued a writ out of the Chancery to inquire [whether the cutting would be to the king's damage]; and by the inquest it was found that this would not be to the king's damage; and so he had the king's leave and commission to fell this wood etc. in his soil etc. within the forest; and he, the said W. of Sutton, sold us the wood with free and undisturbed ingress and egress; and so we have cut and carried away our trees, as well we might, without tort etc.

Willoughby. Our trees, not your trees. Ready etc.

Herle. They [the defendants] said 'their trees growing,' and the 'growing' supposes that the trees were growing on their own soil.

[1] Proper names from the record. This case is Fitz., *Trespas*, 9.

assez dit de escuser [1] le tort a dire lour arbres cressauntz en le soil W. de Suttone, etc.

Hervi. R[esponez] a la r[espounse].[2]

Willebi. Jeo n'ay mye mestier, qar jeo puisse avoir arbres en aultri soil, par quai il ne me covent a ceo r[espoundre], enz dioms nous qe nos arbres abatist, prest etc.

Hervi chacea [3] *Lauf.* a dire qe nos arbres et ne mye le vos,[4] prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 430, Essex.

John of Laver ['Laufare'] and John Westwoode were attached to answer Peter of Taleworthe why with force and arms they cut down and carried away trees of the plaintiff lately growing at Lambourne, to the value of 30*l.*, against the King's peace. The declaration states that on [May 10, 1305] Monday next after the Invention of the Cross in 33 Edw. I. and from day to day for the fifteen days next following the defendants cut down trees, to wit oaks and ashes, of the plaintiff, lately growing at Lambourne, to the value of 30*l.*, and carried them away, against the peace etc.; damages are laid at 40*l.*

The defendants, after formal defence, say that Edward I. by his charter granted to William of Sutton that he might sell the great trees and underwood (*grossas arbores et subboscum*) on seven acres [measured] by the forest perch in his wood of Lambourne, which is within the bounds of the forest, to whomsoever he would etc., so that he to whom the trees and underwood should be sold might fell them and carry them whither he would and make his profit of them as he should see fit. (*Note continued on the opposite page.*)

48. LATIMER *v.* ANON.[5]

Dower, ou le tenaunt alega recoverer devers le baroun, de qy etc., ou le demaundaunt n'avoyt my le oy du plé, mès il avera oy de l'original qe fut porté vers le baroun.

Alice de Latimer [6] porta soun bref de dower vers C. de T., et demaunda soun tierce partie de iij. mees et ccc. acres de terre et ix.

[1] accuser *B*, *D*, *Vulg.* [2] R[esponez] a la resoun Will. *B*; Resp. a la r' Will. *D*. [3] Herin chat' *Vulg.* [4] *Ins.* arbres *B*, *D*, *Vulg.* [5] *Vulg.* p. 22. Text from *A*: compared with *B*, *D*. [6] Laymer *B*, *Vulg.*

Wherefore it seems that they have said enough to show themselves guilty of the tort when they spoke of their trees growing on the soil of W. of Sutton etc.[1]

Stanton, J. You [the defendants] must reply to the answer.

Willoughby. I have no need to do that, for I can have trees that are growing on another person's soil. Therefore I am not bound to answer their allegation; but we say that he cut down our trees. Ready etc.

Stanton, J., compelled Laufer to say 'Our trees and not yours. Ready etc.' [2]

Note from the Record (*continued*).

The defendants produce this charter, and further plead that by virtue thereof William sold to them the trees growing on the seven acres of wood, and that they felled and carried away the trees, as well they might, *absque hoc* that they felled and carried away any trees of the plaintiff against the peace &c., as the plaintiff complains; and of this they put themselves upon the country (absque hoc quod ipsi aliquas arbores predicti Petri ibidem succiderunt seu asportaverunt contra pacem etc. sicut idem Petrus queritur, et de hoc ponunt se super patriam.)

Issue is joined, and a *venire facias* is awarded for three weeks from Easter. No verdict has been found.

48. LATIMER *v.* ANON.

In an action for dower the tenant pleads a recovery by default against the husband in a writ of entry. The demandant cannot require production of the enrolled judgment, but the tenant must plead his right in conformity with Stat. Westm. II. c. 4. That statute does not extend to a case in which the recovery that is pleaded in bar of the claim of dower was had against a stranger.

Alice le Latimer brought her writ of dower against C. of T. and demanded her third part of three messuages and of three hundred

[1] The text is uncertain, and it is difficult to assign to the various advocates their respective parts.

[2] Fitzherbert's note of the case only takes the point that the defendants were driven to say 'and not the trees of the plaintiff.'

acres de pree et c. acres de bruer *cum pertinenciis* en N. del dowement etc. soun baroun.

Herle. Nous vous dioms qe nous ne tenoms qe ij. mees et c. acres de terre et v. acres de pree et lx. acres de bruer etc. En droit d'un mees et c. acres de terre, dower ne deit ele avoir, qar nous vous dioms qe nous mesmes recoverames mesmes les tenementz des qeux etc. vers [1] mesme cesti de qi dowment vous demaundez par jugement de ci einz.[2] Jugement, si dower pussez demaunder.

Toud. Par quel jugement, ou, et devant qi, et en quel bref, et qaunt ?

Herle. Par defaute après defaute [3] en un bref d'entré *ad terminum qui preteriit* et en ceste court et devaunt nos mestres ci etc.

Toud. pria qe l'en queste [4] les roules en le queux la defaute fut entré et [5] jugement sur ceo doné. (Et ceo fit il pur avoir avysement du plee et savoir [6] si le recoverir fust par defaute [7] ou par surrendre le baroun ou en quel manier etc., qe si trové soit qe [8] par surrendre del baroun, ceo ne serroit barre a la femme enz recovera etc. *incontinenti* etc.)[9]

Berr. Vous devetz [10] nous dire la cause de vostre actioun, nanyl ' Veez ici les roules.' Mès vous n'averez nient plus de ceo pur nous. Par quai dites aultre choce.

Toud. Il covent qe si nous pledoms de [11] anentre [12] le jugement de [13] la defaute, et trové fut par roules altrefoitz altre jugement, tot pur nient serroit qaunqe nous ussoms pledé. Par quai etc.

Berr. Vous n'averez plus de nous. Par quai dites altre choce si vous quedetz etc.

Toud. Nous sumes en cas de statut, ore countés et [14] moustrez [15] vostre dreit.

Malm. dit qe Robert soun auncestre fust seisi en soun demene com de fee et de dreit [16] de mesmes ceaux tenementz etc. les esplez etc. Le quil R. etc. lessa etc. a mesme celuy soun baroun a terme qe passé est.[17] Par quai nous portames nostre bref [18] d'entré *ad terminum qui preteriit* etc. Et dioms [19] que ceaux tenemenz après le terme passé a celuy deyvent [20] revertir com a heyr Robert. A quel bref il fit defaute etc. Jugement, depus qe nous avoms [21] recovery de [22] plus

[1] *Apparently* nisi *A.* [2] jugement ceinz *B.* [3] *Om.* defaute *A.* [4] pria denquere *B*, *Vulg.* [5] *Om.* et *A.* [6] assavoir *B.* [7] par statut *B*, *D*, *Vulg.* [8] qi *A.* [9] *Add* et pur ceo le sage sovent overe sagement *B*, *but this is expuncted. It stands in D as part of the text.* [10] devenoms *A*; devoms *D*; devietz *B.* [11] *Om.* de *A.* [12] anient' *B*; anienter *D.* [13] sour *B*, *D*, *Vulg.* [14] ore covient a *B*, *Vulg.* [15] moustrer *A*, *D*, [16] *Ins.* et *A.* [17] *Om.* est *A*; *ins. B*, *D.* [18] *Rep.* bref *A.* [19] deymes *D.* [20] duissent *B.* [21] aoms *A.* [22] *Om.* de *B.*

acres of land and of nine acres of meadow and of a hundred acres of heath with the appurtenances in N. by the endowment of her husband.

Herle. We tell you that we only hold two messuages and a hundred acres of land and five acres of meadow and sixty of heath etc. As to one messuage and a hundred acres of land, she ought not to have dower, for we tell you that before now we ourselves by judgment of this Court recovered the said tenements which [she claims] from the same person by whose endowment she demands. Judgment, whether you can have dower.

Toudeby. By what judgment, when, where, before whom, and in what writ ?

Herle. Upon default after default in a writ of entry *ad terminum qui preteriit* in this Court and before our masters here.

Toudeby prayed that the rolls in which the default was entered and the judgment given might be searched. (And this he did in order to get knowledge of the plea, so that he might learn whether the recovery was by default or on the husband's surrender or otherwise ; for if it be found that the recovery was upon a surrender by the husband, that will be no bar to the wife but she will recover straightway.)[1]

Bereford, J. You ought to tell us the cause of your action and not say simply ' Look at the rolls.' But you will get no more from us. Therefore say something else.

Toudeby. If we were to plead in annulment of this judgment by default, and it were found in the rolls that the judgment was of another kind, all that we pleaded would be good for nothing.

Bereford, J. You will get no more from us. So, if you think [to recover], say something else.

Toudeby. We are in the case for which the Statute[2] provides. So plead and show us your right.

Malberthorpe. Robert, the ancestor of [the tenant], was seised of these tenements in demesne as of fee and of right etc. and took esplees, etc. ; and Robert leased to [the demandant's] husband for a term that has expired ; so we brought our writ of entry *ad terminum qui preteriit*, and we said that after the expiration of the term these tenements ought to revert to [the tenant] as to the heir of Robert ; and to this writ [the demandant's husband] made default etc. We pray judgment whether, since we have recovered higher up,

[1] In some MSS. we see the remark that often a wise man works wisely.

[2] Stat. Westm. II. (13 Edw. I.) c. 4. See Sec. Inst. 349.

haut, si de nully [1] seisine de plus bas, et la quel est defet par jugement de ceste court, pusse accioun avoir de dower etc.

Toud. pria oy du bref original qe fut porté vers le baroun etc. (Et ne fust mye en court, par quei il attendist taunqe a lendemeyn etc.[2])

Herle. Sire, en dreit del aultre mies et les lx. acres de bruer, nous vous dioms qe nous mesmes recoverames mesmes les tenementz vers un Alexandre par jugement de ceste court. Jugement, si dower pusse recoverir etc.

Pass. Par quel jugement etc.?

Malm. Veez vous mesmes, qar nous [3] sumes pas en cas de statut, qe nostre recoverir se fit vers un estraunge [4] etc.

Quere s'il purra abatre l'original s'il pettast [5] en forme.[6]

{Nota [7] en bref de dowere le tenaunt allegga recoveryr fet par jugement vers altre persone qe vers le baroun. Et la femme demaunda par quel jugement. Et a ceo fut r[espoundu] q'il n'avoit mester, qar il allega recoveryr vers estraunge et nient vers soun baroun.}

49. OSGODBY *v.* WOBURN (ABBOT OF).[8]

Quod permittat, ou le bref fust agardé bone, nent aresteaunt qe il ne dist pas en le bref le quel il clama la comune, ou apurtenaunt ou par especialté.

Adam de Osgodbi persone de E.[9] porta soun *quod permittat* vers Robert Abbé de Woborn,[10] et dit qe a tort ne luy seoffre avoir comune de pasture en xviij. acres de terre en E. a comoner les ij. aunes après les blees emportetz en tut manier etc.[11] et le terce par my tot l'an, de quel comune Thomas Abbé de W. predecessour cesti Abbé disseisi Hamound de Pass' predecessour cesti persone etc.[12]

Hamtone [13] demaunda jugement de la forme de cesti bref; qar en le bref n'est pas dit qu'il clama par especialté ou apurt[enaunce] a soun fraunctenement. Par quai nous demaundoms jugement du bref.

[1] nulle *B.* [2] *In B, Vulg. the last sentence is ascribed to Berr.* Il n'est mye en court entendetz tanqe demeyn etc. *D resembles A, but gives* entendetz. [3] *Ins.* ne *B.* [4] *Ins.* jugement *B, D, Vulg.* [5] *Or* pectast *A.* [6] *Om. this query D.* [7] This note is taken from *P.* [8] *Vulg.* p. 23. Text from *A*; compared with *B, D, P, R.* [9] Exteby *P.* [10] Rouburne *P*; Willeby *R.* [11] ove toutes maneres bestes *B, Vulg.* [12] *P.* gives a fuller count, stating the predecessor's seisin with taking of esplees. [13] Stanton *B, D*; Hambur' *R.*

you can have any action for dower on a seisin lower down, which seisin is undone by the judgment of this Court.

Toudeby prayed oyer of the original writ brought against the husband. (And it was not in court, so he waited until the morrow.)

Herle. Sir, in respect of the other house and the sixty acres of heath, we tell you that we recovered the same tenements against one Alexander by judgment of this Court. Judgment, whether you can recover dower etc.

Passeley. By what judgment?

Malberthorpe. See for yourselves, for we are not in the statutory case, for our recovery was against a stranger.

Quaere whether he could have abated the original writ if he had sought to do so in due form.

{Note[1] that in a writ of dower the tenant alleged a recovery by judgment against a person other than the husband. The woman asked 'By what judgment?' And to this it was answered that he had no need to say, as the alleged recovery was, not against her husband, but against a stranger.}

49. OSGODBY *v.* WOBURN (ABBOT OF).[2]

A writ of *quod permittat* for pasture is upheld, though it does not state whether the right is claimed by specialty or by way of appurtenance.

Adam of Osgodby, parson of Wavendon, brought his *quod permittat* against Robert, Abbot of Woburn, and said that wrongfully the Abbot did not suffer him to have common of pasture in eighteen acres of land in Wavendon—namely, to common there for two years with all manner of beasts after the corn was carried away, and in the third year throughout the whole year; of which common Robert, Abbot of Woburn, predecessor of this Abbot, disseised Hamond Passelewe, the plaintiff's predecessor as parson.

Hamton prayed judgment of the form of the writ, for the writ does not say that he claims by specialty or as appurtenant to his freehold. So we pray judgment of the writ.

[1] This seems to be a note of the preceding case.
[2] Proper names from the record.

Hervy.[1] Put estre qe l'egglise ad esté seisi de cele comune du temps dount il n'i ad memorie etc., et donqe est lour bref bon.

Herle. Nostre accioun est foundé[2] sur la disseisine fait a nostre predecessour, et si nostre predecessour eust porté bref de novel diseisine vers mesme celuy, il ne covendra mye avoir dit en soun bref 'per speciale factum' *neque* 'pertinens ad liberum tenementum suum etc.' Et del houre qe nostre bref est foundé sur mesme la seisine,[3] il semble qe nostre bref saunz faire tittle ou com appurt[enaunce] ou par especiaulté est assez bon en ceo cas. Jugement etc.[4]

Hervi[5] agarda le bref bon. Et pur ceo r[esponez] etc.

Hamtone defendi et demaunda la vewe. (Et habuit.)

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 458, Buck.

Robert, Abbot of Woburn, was summoned to answer Adam of Osgodby, parson of the church of Wavendon, in a plea that the Abbot permit Adam to have common of pasture in Wavendon, whereof Roger, sometime Abbot of Woburn, predecessor of the said Abbot, unlawfully and without judgment disseised Hamo Passelewe, sometime parson of Wavendon, predecessor of the said Adam since the first [voyage of King Henry III. into Gascony]. (*Note continued on the opposite page.*)

50. FRESSINGFELDE *v.* JONESMAN.[6]

Engettement de garde, ou piert qe si celuy q'est tenaunt de la garde seit pas nomé, le bref abatra, qar altre de ly etc.

Johan Fresyngfelf[7] porta soun bref *de eiectione*[8] *custodie* vers Robert de E., et dit q'il fust seisi de la garde d'un mies et iij. acres de terre etc., par la resoun del nounage E. fitz e heir Johan Lovel et par le meyndre age Aleyn fitz Thomas Siwit,[9] de qui Johan teint[10] par service de chivaler, scil.[11] etc., qe tient de[12] Johan de F. en service *per consimile servicium* come mene entre eaux par le assignement

[1] *This speech from P.* [2] conceu *B, Vulg.*; conte *D.* [3] cause *B, D, Vulg.* [4] *Herle.* Si son predecessour ust eu bref bon de novele diseisine de cele comune saunz dire apurtenaunt a soun fraunktenement, et par consequent cesti bref en lentier foundu sur mesme la diseysine est bon etc. *P.* [5] *Om. this paragraph, P.* [6] *Vulg.* p. 23. Text from *A*: compared with *B, D, P, R.* [7] Fresingfelde *R.* [8] egeccione *A.* [9] T. de S. *R, P.* [10] qe de J. Lovel tent *R, P.* [11] set *B, Vulg.* [12] *Om. until next* de *D.*

STANTON, J. It may be that the church has been seised of this common from time of which there is no memory, and then the writ is good.

Herle. Our action is founded on the disseisin done to our predecessor, and if our predecessor had brought a writ of novel disseisin against [the disseisor], he would not have had to say 'by specialty' nor 'appurtenant to his freehold.' And since our writ is founded on the same cause, it seems that our writ is good enough in this case without making title by appurtenancy or by specialty. Judgment etc.

STANTON, J., adjudged the writ good, and said that the defendant must plead over.

Hamton defended, and demanded a view; and this was granted him.

Note from the Record (*continued*).

The count states that Hamo was seised of common of pasture in eighteen acres of land—namely, of commoning with all manner of his beasts for two years (*singulis duobus annis*) after the corn is carried away and during the whole of every third year, as of fee and the right of his church of B. Mary of Wavendon, in the time of King Henry III. The rest of the count is represented by *et de qua etc.*, but we infer that it charged the Abbot's predecessor with disseising Hamo.

No notice is taken of any attempt to abate the writ. The Abbot at once demands a view, and this is allowed him.

50. FRESSINGFELDE *v.* JONESMAN.[1]

In an action of ejectment from a wardship, the person who holds the wardship must be made a defendant. Discussion of an alleged variance between writ and count.

John Fressingfelde brought his writ of ejectment of ward against William Jonesman, and said that he was seised of the wardship of a messuage and four acres of land etc. by reason of the nonage of Alan, son and heir of Geoffrey Lover, and the nonage[2] of the son and heir of Thomas Swift, of whom [Geoffrey Lover] held by knight's service, and who held of [the demandant] by like service as mesne by the

[1] Proper names from the record. This case is Fitz., *Briefe*, 779.

[2] This is a case of 'ward by reason of ward.'

Robert [1] Counte de Oxneforde, qi les services Thomas assigna a Johan a terme de la vie Johan; [2] par quai [3] Thomas se atourna a Johan de sa fealté etc., et seisi fut de cel [4] garde taunqe Robert et les aultres etc. luy engetterent etc.

Herle defendi etc. Et demaundoms jugement de la variaunce entre le bref e le counte; qar soun bref voet 'cum custodia unius mesuagii et iij. acrarum terre etc. in Medilham Johanni [5] de F. pertineat [6] usque ad legitimam etatem E. filii et heredis J. Lovel per minorem etatem Alani filii Thome etc., de quo idem Johannes tenuit per servicium militare, qui de prefato Johanne [7] tenuit in servicio per consimile servicium ut medius inter eos etc.' Et issint vous clametz la garde a vous apurtenir com de vostre dreit demene sauntz faire nul mencioun del assignement le Counte,[8] et en vostre count dites qe la garde a vous appent par resoun del assignement le Counte. Jugement de la varriaunce.

Lauf. La variaunce ne vous deit grever,[9] qar nous ne demaundoms mye la garde del assignement le Counte, enz dioms q'il nous assigna les services Thomas, par resoun des queux services nous demaundoms la garde com de nostre dreit demene; qar,[10] si jeo eusse counté q'ele [11] appendisit [12] a moy com de moun dreit demene,[13] il [14] convendreit avoir dit qe Thomas morust en mon homage, *et sic male.*[15] Par quai etc.

Berr. a Herle. Si vous ly pussez [16] doner meillour bref en soun cas, jeo asenterey bien a vous. Et [17] eietz pitee de nous, qe nous [18] ne [19] chargetz mie ou mestier n'est, enz [20] dites outre.

Herle. Jeo frai volunteres etc. si l'atourné le voille. Mès, Sire, jeo vous dirroi autre choce.[21] Il ad porté soun bref vers Robert de E. et plusours aultres, et par sa malice il ad entrelessé celuy qe tient la garde; par quai il n'y ad nient un de [22] ceaux vers queux le bref est ore porté qe pusse la propreté de la garde [23] pleder. Par quai il covent qe nous pledoms a meutz [24] qe nous porroms.[25]

Hervi.[26] Est ceo issint auxi com Herle dit ou noun? [27]

Lauf. Ceo est un bref de trespas, et nous dioms qe vous estes

[1] *Om.* qe tient de Johan . . . Robert *B, Vulg.* [2] terme de sa vie *B, Vulg.* [3] par quel assignement *R, P.* [4] la *R, P.* [5] Johan *A.* [6] pertiniat *A.* [7] *Ins.* de F. *D, R, P.* [8] *Om. until after next* assignement le counte *D.* [9] Ceo nous de deit nuire *P.* [10] mes *R.* [11] qe la garde *R, P.* [12] apent *R, P.* [13] *Ins.* sanz fere mension de mon estat *R, P.* [14] *Ins.* moi *R*; me *P.* [15] et ceo ne poy jeo dire *R, P.* [16] porriez *R*; purrez *P.* [17] Mes *B, Vulg.*; mais *D.* [18] vous *B, D, Vulg.* [19] *Ins.* nous *B, D.* [20] bref vostre chalenge serreit bon mes autre bref ne put il avoir par qey *R, P.* [21] *Om.* Jeo . . . choce *R, P.* [22] il n'y ad nul de *R, P.* [23] *Ins.* clamer ou *B, Vulg.* [24] pledoins avientz *Vulg.* [25] *Om.* par . . . porroms *R, P.* [26] Herin *Vulg.* [27] *Om. speech, R, P.*

assignment of Robert, Earl of Oxford, who assigned the services of Thomas to the demandant for the demandant's life; by reason whereof Thomas attorned to the demandant for his fealty etc., and the demandant was seised of the wardship until [William] and the other ejected him.

Herle defended etc. And (said he) we pray judgment of the variance between writ and count. For his writ says: 'Whereas the wardship of a messuage and three acres of land etc. in Mendham belongs to John of F. until the lawful age of Alan, son and heir of [Geoffrey Lover], by reason of the nonage of the heir of Thomas etc., of whom the said [Geoffrey Lover] held by knight's service, and [which Thomas] held of the said John [the demandant] by like service as mesne between them' etc. And so you claim [in your writ] that the wardship belongs to you as of your own right without making mention of the assignment by the Earl; and in your count you say that the wardship belongs to you by reason of the assignment by the Earl. Judgment of the variance.

Laufer. The variance ought not to hurt us, for we do not demand the wardship by the Earl's assignment, but say that he assigned us the services of Thomas; and by reason of his services we demand the wardship in our own right; for if I had counted that it belonged to me in my own right, without making mention of my estate, then I should have had to say that Thomas died in my homage; and that I could not have said.[1] Therefore etc.

Bereford, J., to *Herle.* If you could give him a better writ for his case, I should agree with you. Take pity upon us, and do not burden us where is no need,[2] but plead over.

Herle. I will do that gladly if the attorney is willing [to let me do so]. But, Sir, I will tell you something else. He has brought his writ against [William] and some others; and he has of his malice omitted the person who holds the wardship; and so there is no one of those against whom the writ is brought who could plead the property in the wardship. So we have to plead as best we may.

Stanton, J. Is what *Herle* says true: yes or no?

Laufer. This is a writ of trespass, and we say that you are

[1] The demandant, it will be observed, is only tenant for life by the Earl's assignment.

[2] In other words: Do not compel us unnecessarily to decide a doubtful question.

deforceours de la garde. Jugement,[1] si a ceo avoms mestier a respoundre.

Hervi.[2] Vous ne poetz dire qe vous eietz[3] en vostre bref tenaunt de la garde, si[4] agarde la court qu'il ne preigne rien par soun bref etc.[5]

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 440d, Suff.

William Jonesman de Medefeld and fourteen others, including Richard of Breggebroke and Roger Russel, were attached to answer John of Fressingefelde by a writ stating that, whereas the wardship of one messuage and of three acres of land in Mendham,[6] which Geoffrey Lover held by military service of Thomas Swyft, who held them of the plaintiff by the like service as mesne between [Geoffrey and the plaintiff], ought to belong to the plaintiff until the lawful age of Alan, Geoffrey's son and heir, by reason of the nonage of the heir of Thomas, who is within age, and whereas the plaintiff had long been in peaceful seisin of the said wardship, William and the other defendants, together with five other named persons, by force and arms ejected the plaintiff from the said wardship, and took and carried away his goods and chattels there found, and beat and wounded his men there being. The declaration states that Geoffrey Lover held of Thomas Swyft by homage and fealty and one penny and a halfpenny towards a scutage of forty shillings; and that Thomas held the tenements 'in service' of the plaintiff by reason of an assignment which Robert de Veer, sometime Earl of Oxford, made to the plaintiff of the service of Thomas for the lifetime of the plaintiff; and that upon this assignment Thomas attorned himself for his service to the plaintiff; and that thus the wardship of Alan, Geoffrey's heir, belongs to the plaintiff because of the nonage of Thomas's heir; and that the plaintiff had long been seised of the wardship. (*Note continued on the opposite page.*)

51A. ANON.[7]

Accompt de sockage, ou le bref est meintenue vers le plus estraunge qe eit happé la possessioun de soun tort demene: ou il clame la garde par le lees cely qe fut procheyn amy al heir et demaunde jugement etc.

Un Johan porta bref d'acounte vers un William par la resoun q'il i avoit la garde de ses[8] teres, qe sount tenuz en sokage, taunt com il

[1] *End of speech, R, P.* [2] Herin *Vulg.*; Staunt. *R*; Stauntone *P.* [3] avez *R, P*; navez *B.* [4] et pur ceo *B.* [5] qe vous ne pregnetz rien etc. *R*; qe vous ne pregnez rien par vostre bref *P.* [6] Fressingfield, Metfield, and Mendham lie close together. [7] *Vulg.* p. 24. Text from A: compared with *B, D.* [8] ces *A.*

deforceors of the wardship. Judgment, whether we are bound to answer this.

Stanton, J. You cannot say that you have in your writ any tenant of the wardship; so the Court awards that [the plaintiff] take nothing by his writ etc.

Note from the Record (*continued*).

The plaintiff adds that on [Feb. 7, 1308] Thursday next after the Purification of B. Mary in 1 Edw. II. the defendants ejected him and carried off his chattels and beat his men, to his damage, laid at 100 marks.

The defendants say that they ought not to answer to such a declaration. For they say that in his declaration the plaintiff supposes that Thomas held the tenements of him by reason of the assignment which the Earl of Oxford made to the plaintiff for his (the plaintiff's) life of the service of Thomas etc., and in the writ it is inserted that Thomas held in service of the plaintiff as of his own (the plaintiff's) right.[1] So the defendants demand judgment of the variance between declaration and writ. Also they say that no one named in this writ deforces the said wardship from the plaintiff; for they say that after the death of Geoffrey Lover, who held the tenements by military service of one John of Medefeld, the defendant William and the others (except Richard of Breggebroke and Roger Russel, who did not come there etc.), as men and servants of John of Medefeld, seised into his hands the wardship of the said tenements; and that John has demised them to Alice, wife of Geoffrey Lover, to hold until the lawful age of the said Alan. And thereof they demand judgment.

'And John of Fresingfeld [the plaintiff] cannot deny this (*hoc*). Therefore it is awarded that William and the others go without day, and that the said John take nothing by his writ, but be in mercy for his false claim etc.'

51a. ANON.

Qu. whether the statutory action for an account against guardian in socage will lie against one to whom the guardian by right has leased the wardship. *Semble* it will lie against a stranger who assumes the wardship without title.

One John brought a writ of account against one William for that [William] had the wardship of [John's] lands, which were holden in

[1] *et in brevi inseritur quod predictus T. ea tenuit de prefato J. de F. in servicio ut de iure proprio ipsius J. de F.* From the record we should not gather that the writ did contain the phrase *ut de iure proprio*; and the defendants probably mean that the writ, since it says nothing of an assignment for life, is one suited to the case of a plaintiff who claims a wardship *ut de iure suo proprio*.

fut denz age de la feste Saint Michel l'an xxj. taunqe a mesme la feste xxij.

Hunt. defendi etc. et dit q'il ne dust[1] a cesti bref respoundre, qe ceo est un bref q'est foundé sur ley especial et est naturelement doné vers ceaux qe ount la garde du dreit, com vers[2] le procheyn ami l'emfaunt etc. par resoun de norture, mesme cesti William vers qi ceste bref est ore porté n'est parent a soun piere ne a sa miere ne reinez[3] ne claym par resoun de norture, mès de un lees R. gardeyn del heir[4] a qi[5] norture fust. Juggement, si vers nous etc. Et dit outre qe ij. aunes avoyt il la garde pur c. s. par an et le remenaunt de an en an a la volunté R. etc.

Herle. Et nous jugement, del houre qe vous avetz conu of nous qe[6] vous avetz[7] nostre heritage tot le temps qe nous avoms counté, et cesti bref est doné vers chescun estraunge qe eiet[8] happé la garde, auxi bien com vers privé, si nous ne devoms acounte avoir del houre qe celuy qe ad le profit de la terre deit de dreit del acounte estre chargé.

Hervi[9] *ad idem.* Jeo pose qe vous avetz[10] un tenaunt qe tient de vous en sokage; il devie; après qi mort vous happez la garde com s'il fussent tenuz de vous en chyvalrie; l'enfaunt qaunt il[11] vient a soun age porte soun bref d'acounte vers vous, et vous r[esponez] et dites qe vous ne devez acount rendre[12] purceo qe les tenementz sount tenuz en fee de chyvaler; et sur ceo joynt enqueste; qe dit qe les tenementz sount tenuz en sokage; en cel cas, purceo qe vous avetz[13] eu[14] la garde sauntz r[eson],[15] vous serretz par agarde chacé al acounte render. Auxi par de cea.

Hunt. Nent semblable, qe en ceo cas ou vous parletz, ou le seignour cleyme les tenementz estre tenuz par chevalrie et trové est qe en[16] sokage, donqe n'est mie merveille mès q'il rende acounte du temps q'il ad tenu la terre sauntz reson. Mès ore est aultre en nostre cas ou nous sumes ore, que nous ne clamoms estat fors qe du lees le gardeyn du dreit, vers qi vous averez de dreit vostre recoverir.

Hervi.[17] Jeo pose qe vous eussez fait wast en vostre temps, si le heir portast soun bref vers vous, vous r[espoundriez][18] del wast fait en vostre temps, desicom[19] par mesme la r[eson] del acount de vostre temps devez r[espoundre].

[1] doinent *Vulg.*; doivent *B.* [2] droit de cely qe est *B*, *Vulg.*; droit qar est *D.* [3] rien *B.* [4] de droit *B*, *D*, *Vulg.* [5] *Ins.* la *B*, *D.* [6] *Ins.* nous eymes en un de temps qe *D.* [7] avietz *B.* [8] eit *D.* [9] Herin *Vulg.* [10] eietz *B*, *D.* [11] *Om.* il *A.* [12] devetz aconter *D.* [13] avietz *B.* [14] en *Vulg.* [15] resoun *in full B*; raisoun *D.* [16] en qe *A.* [17] Herin *Vulg.* [18] respondretz *D.* [19] *Ins.* vous r' etc. *A*, *B*, *D*, *Vulg.*

socage, while [John] was under age, from Michaelmas in the year 21 [Edward I.] to the same feast in the year 22.

Hunt. defended etc., and said that he ought not to answer to that writ, for it is a writ founded on special law,[1] and by its nature is given against those who by right, as the next friends of the infant and by reason of nurture, have the wardship of the infant; whereas this William, against whom this writ is now brought, is not of kin to the [infant's] father or mother and claims nothing by reason of nurture, but claims by the lease of one R., the guardian of the heir, to whom the nurture belonged. Judgment, whether against us etc. (And he further said that for two years he had the wardship for a hundred shillings, and for the rest he had it from year to year at the will of R.)

Herle. And we pray judgment since you have confessed to us that you had our heritage for the whole time mentioned in our count. And since this writ is given as well against any stranger who may 'hap' the wardship as against a privy, we pray judgment whether we ought not to have an account, since he who had the profit of the land ought by law to be charged with the account.

Stanton, J., to the same effect. I put case that you have a tenant who holds of you in socage; he dies and after his death you 'hap' the wardship, just as if the lands were holden of you in chivalry. Then the infant when he comes to his full age brings a writ of account against you. You answer and say that you ought not to render an account since the lands are held of you as knight's fee. On this an inquest is joined, and it says that the tenements are holden in socage. In that case you will be driven by award [of the Court] to render an account since you have had the wardship without lawful cause. So in this case.

Hunt. That is not like our case. In the case of which you speak, where the lord claims the tenements as holden in chivalry and it is found that they are holden in socage, it is no wonder that he has to render account for the time during which he held the land without lawful cause. But it is otherwise in our case, for we claim no estate except by the lease of the guardian by right, against whom by law you will have your recovery.

Stanton, J. I put case that you were guilty of waste in your time. Then, if the infant brought a writ, you would have to answer for the waste done in your time. For the same reason you ought to answer for an account in your time.

[1] Stat. Marlb. c. 17.

Herle. Et nous jugement, desicome il ad conu qe le gardeyn du dreit luy lessa [1] la garde, et cest bref est doné vers gardeyn, a qi il ne r[espount] nient. E demaundoms jugement.

Lambert. Vous ne poetz avoir le bref vers luy auxi com vers gardeyn de dreit, qar gardeyn de dreit tient en noun le heir et nyent en soun noun demene, vers qi le bref est ore doné par statut, mès celui qe tient du lees le gardeyn tient en soun noun demene. Par quei [2] etc.

Dies datus est ad audiendum iudicium in octabas S. Hillarii.

51B. ANON.[3]

Alexaundre de Washam et B. sa femme porterent lour bref de accounte etc.

Hunt. De nous ne poez acounte avoir, qar nous ne sumes pas le prochein amy etc. a qi ceste garde apent, einz est un Johan de T. cum prochein amy etc., qe cele garde avoit aunz et jours, et nous lessa cele terre a ferme pur c. sous rendaunt par an ; par quele ferme nous ly payames ; vers qi vous avez vostre recoveryr. Jugement, si vers nous qe n'aveymes forqe ferme etc.

Herle. Vous avez conu qe vous aviez la garde al temps qe nous avoms dit. Jugement, si par ceo bref ne avera homme ben acounte vers estraunge s'il eit la garde.

Stant. Q'il git entre estraunges, ceo aparust entre l'Evesqe de Wyncester et Johan de Stodleye.

Herle. Auxi vous troveray jeo altre plusours.

Hunt. Ceo n'est pas merveyle en ceo cas, q'il happa la garde pur ceo q'il dit qe J. tint de ly par serviz qe etc., ou fut trové le revers. Mès en ceo cas nous ne sumes pas gardeyn, einz fermer J. qe ceux tenemenz nous lessa pur c. sous q'il prit de nous, ou [4] qe naturelement furent les issues de la terre, et il les prist. Par qei il semble q'il deit l'acounte rendre.

Staunt. Si vous ussez fait wast, ne ust le bref de wast ju [5] devers vous (*quasi diceret sic*) ?

Hunt. Jeo crey qe noun, mès vers nostre lessour.

Herle. Gardein de ceux tenemenz et qe receyvent les issues de la terre rendent acounte, et vous avez r[eceu] etc. Par qei devers vous gist cesti bref.

[1] lessa soun estat par consequens lui lessa il *B*, *D*. [2] qi *A*. [3] Text from *P*. [4] *Perhaps equivalent to* ov. [5] *Or* in *P*.

Herle. We also pray judgment, since he has confessed that the guardian in law leased the wardship to him, and this writ, to which he does not answer, is given against a guardian. We pray judgment.

Lambert [of Trikingham, J.]. You cannot have a writ against him as you could against a guardian in law, for a guardian in law holds in the name of the heir and not in his own name, and against [the guardian in law] a writ is now given by Statute. But he who holds by lease from the guardian holds in his own name; wherefore etc.

A day is given to hear judgment on the octave of St. Hilary.

61b. ANON.

Alexander of Washam and B. his wife brought their writ of account etc.

Hunt. From us you cannot have an account, for we are not the next friend etc. to whom the wardship belongs; but one John of T., who as next friend had had this wardship for some time, leased this land to us to farm at a rent of a hundred shillings a year, and this rent we paid him, and against him you have your recovery. Judgment, whether against us who were but a farmer [you can bring this writ.]

Herle. You have confessed that you had the wardship at the time mentioned by us. Judgment, whether by this writ one cannot demand an account from a stranger if he has the wardship.

Stanton, J. That the writ lies against strangers is shown by the case of John of Studley and the Bishop of Winchester.

Herle. Yes, and I could find you others [against whom it has been brought].

Hunt. No wonder! There [the bishop] assumed the wardship, saying that [Studley] held of him by a service that [gives wardship to the lord], and this was found to be untrue. Here, however, we are not guardian but the farmer of J., who leased to us these tenements for a hundred shillings, which naturally [must be regarded as] the issues of the land, and they came to his hand. So he, it seems, is the person to render the account.

Stanton, J. If you had committed waste, would not a writ of waste have lain against you?

Hunt. Not against us, but against our lessor, so I think.

Herle. A guardian of the land and one who receives the issues of the land are to render account. And you have received [the issues]. So this writ lies against you.

Launf. Il dit q'il n'avoit pas la garde. Par qei vers celi vers qi le bref de wast girreit, vers ly etc.

Herle. Il counte q'il avoit l'estat J., qe n'avoit mesqe garde. Et s'il avoit soun estat, *ergo* il avoit garde. E des tenemenz tenuz par serviz de chivaler le gardeyn du fet avereit bref de engetement de garde, qe prove qe gardeyn du fet est gardeyn.

Pass. Possible serroit qe le prochein amy qe ocupa la garde et qe lessa etc. n'avereyt rien a r[espoundre] a l'enfaunt etc. qaunt il serroit de age. Donqe meyndre duresse serroit a fere celi qe put lez issues rendre rendre cez [1] acountes qe de anentyr le enfaunt par cas pur touz jours.

Et sic ad iudicium in octabas S. Hillarii.

52. ANON.[2]

Ou piert qe si le tenaunt descleym et jugement rendu sur le desclamer l'altre avera mye assise.

Nota qe la ou tenaunt vient en court et dit q'il ne clama rienz en les tenementz qe furent demaundez vers luy, fut dit al demaundant qu'il se poet mettre en les tenementz baudement,[3] qar s'il porte l'assise il serra barré par le desclamer si le jugement sur le desclamer soit entré.[4]

53. ANON.[5]

Dette, ou il mist avaunt fait fet en estraunge terre, et le bref abatu.

Un Johan porta soun bref de dette vers un William et en testmoignaunce de la dette mist avaunt un escrit qe fust fait a Berrewike.

Herle. Vous ne poetz de cest escrit conissaunce avoir, qu'il fust fait hors du realme. Jugement, si par fait fait en une estraunge terre ceste dette pussez dereiner.

[1] *For* ses. [2] *Vulg.* p. 24. Text from *A*: compared with *B*, *D*. [3] vaude ment *Vulg.* [4] *Om.* si le jugement . . . entre *Vulg.*, *B*, *D*. [5] *Vulg.* p. 24. Text from *A*: compared with *B*.

Laufer. He says that he has not the wardship. So it is against the person against whom the writ of waste would lie [that you must seek an account].

Herle. He counts that he had J.'s estate. But J. had only a wardship. Therefore, if [the defendant] has [J.'s] estate, he has the wardship. And of tenements held by knight's service a guardian *de facto* shall have a writ of ejectment of ward. This proves that a guardian *de facto* is a guardian.

Passeley. It might happen that the next friend who occupied the wardship and leased it [to the defendant] would have nothing wherewith to answer the demand of the infant when he attained full age. It will be a less hardship to make this man, who can render the issues, render an account than that, as might happen, the infant should be undone for ever.

So to judgment on the octave of St. Hilary.

52. ANON.

Effect of a disclaimer in giving the other party a right to enter on the disclaimed tenement.

Note that where a tenant [in an action] came into court and said that he claimed nothing in the tenements demanded against him, [the demandant] was told that he might fearlessly put himself into the tenements; for, if [the other party] bring an assize, he will be debarred by the disclaimer, if judgment on the disclaimer be entered.

53. ANON.[1]

The Court cannot take cognizance of a deed made outside the realm: for example, at Berwick.

One John brought his writ of debt against one William, and in testimony of the debt put forward a deed made at Berwick.

Herle. You cannot take cognizance of this deed which was made outside the realm. Judgment, whether by a deed made in a strange land you can dereign this debt.

[1] This case is Fitz., *Obligacion*, 15.

L'escrit fust lewe qe testmoigna etc. Et purceo qu'il fust fait a Berewike ou ceste court n'avoit conissaunce, fust agardé qe Johan ne prist rien par soun bref etc.

54. ANON.[1]

Cui in vita, ou piert qe si le tenaunt alegge la vie le baroun, le demaundaunt sera chacé a dire ou mort, et la chose sera prové, et qe meust provera etc.

Alice qe fut la femme Johan de C. porta soun *cui in vita* vers Tebaude de B.,[2] et dit qu'il n'avoit entré si noun par Johan soun baroun, a qi ele en sa vie countredire ne poet.[3]

Herle. Ele ne deit estre[4] r[espound]u, q'il est en pleyn vie. Jugement etc.

Kyng.[5] Nous voloms averir q'il est mort par qaunt qe ceste court agarde.[6] (Et fut chacé par la court a dire ou il morust.)

Kyng.[7] Il fut pendu[8] a Staunford,[9] et ceo voloms nous averir par quant qe ceste court agarde. (Et de ceo tendist prove la ou[10] q'il fut mort.)

Hedon tendi la prove qu'il fut en vie.

Et a ceo furent[11] resceu issint qe celuy qe meutz[12] provereit meutz[13] averoit. Avoient[14] jour a faire lour prove. A quel jour Tebaud fust essonié, et Alice vient e prova la mort soun baroun par iiij. jurez qe ceo acorderent[15] en totes choses. Et a un altre jour vint Tibaud et prova par xij. jurez qe se acorderent en totes choses q'il fut en vie.[16] Et purceo qe la prove Tebaud fust meillour et greinour[17] qe la prove la femme, fust agardé q'ele ne preist rien par soun bref quant a ore, issint q'ele defaudereit[18] tauncque soun baroun soit[19] mort.

[1] *Vulg.* p. 24. Text from *A*: compared with *B*, *D*, *P*. [2] Brikan *B*, *D*, *Vulg.*; Brich' *P*. [3] pout *B*, *P*; poeit *D*. [4] *Om.* estre *A*. [5] Hingham *P*. [6] *Om.* par . . . agarde *B*, *D*, *P*. [7] Hyngham *P*. [8] rendu *A*; pendu *B*, *P*. [9] Stafford *P*. [10] *Om.* la ou *B*, *P*. [11] fuist *B*; fut *P*. [12] mendr' *Vulg.*; meud *B*, *D*; meuz *P*. [13] mendr' *Vulg.*; meud *B*, *D*; meuz *P*. [14] avoit *A*. [15] sacorderent *B*, *Vulg.*; se acorderent *D*. [16] This sentence, supplied from *P*, is wanting in *A*, *B*, *D*, *Vulg.* [17] Tibaud fut par plusours provee *P*. [18] defaudroit *B*, *Vulg.*; defaudreit *D*; qaunt a ore mes atend' *P*. [19] fuist *B*, *Vulg.*; soit *A*, *P*.

The deed was read and it witnessed etc. And because it was made at Berwick, where this Court has not cognizance, it was awarded that John took nothing by his writ etc.

54. ANON.[1]

In a *cui in vita*, the question whether the demandant's husband is alive having been raised, a 'trial by witnesses' is awarded and the more numerous suit prevails.

Alice, wife that was of John of C., brought her *cui in vita* against Tibald of B., and said that he had no entry save by John her husband, whom in his lifetime she could not contradict.

Herle. She ought not to be answered, for [her husband] is alive. Judgment, etc.

[*Kyng.*] We will aver in such wise as this Court may award that he is dead. (And he was driven by the Court to say where he died.)

[*Kyng.*] He was hanged at Stamford, and this we will aver in such wise as this Court may award. (And he tendered proof that the husband was dead.)

Hedon tendered proof that he was alive.

And to this they were received in such manner that he who best proved should best have. They had day to make their proof. At that day Tibald was essoined, and Alice came and proved her husband's death by four people who were sworn and who agreed with each other in all things. And at another day came Tibald and proved that [the husband] was alive by twelve people who were sworn and who agreed with each other in all things.[2] And because Tibald's proof was better and greater than the woman's proof, it was awarded that she should take nothing by her writ at present but should wait for her husband's death.

[1] This case is Fitz., *Triall*, 46. It is discussed by Thayer, Evidence, p. 23.

[2] In Fitzherbert's note the demandant produces twelve and the tenant sixteen suitors.

55. NEUDEGATE *v.* ATTE LOGGE.[1]

Replevine, ou il alege recoverer del demene de plus halt etc., et le defendaunt dit qe cely de qi seisine il alege le recoverer n'avait unqes rien. *Quere* s'il sera receu.

Replegiari de catallis pur ceo q'il ne poeit altre destresce aver etc.

William de Noudegate[2] se pleynt qe Roggier de Harrel[3] a tort pris ses chateaux,[4] scil. la fuzil[5] de soun molyn et la cluse de soun molyn et ij. trendeles[6] etc.

Pass. Roggier avowe la prise bone sur un Thomas le Mouner, par la resoun qe mesme celuy Thomas tient de luy un mies et un molyn, iiij. acres de terre et ij. acres de pree par fealté et par les services xiiij. s. par an a paier a iiij. termes oweles,[7] et a prendre la moyté de[8] pesson pris en le estange du molyn, et a moudrer[9] ses[10] bleez cressauntz en ses[11] demenes quites de moture ;[12] de queux services il fust seisi par my la meyn Thomas etc., et purceo qe[13] la rente d'un terme fust ariere il avowe, purceo qu'il ne poet aultre destresse trover. Et purceo qu'il counta qu'il fut seisi umqore des chateux, il gaga la delyveraunce a la barre.[14]

Willebi rehercea l'avowrie, et dit qe les tenementz dount il demaunde ceste rente furent en asqun temps en la seisine Richard de Neudegate, ael William q'ore se pleynt, qe hors de sa seisine les lessa a Rogier de Horle[15] a terme des aunz.[16] Rogier hors de sa seisine les lessa a un Aumfrey[17] le Mouner en fee, fesaunt a luy par an xiiij. s. Aumferey morust. Après qi mort entra Thomas le Mouner, sur qi il avowent ore, com filz et heir ; issint qe William q'ore se pleint porta soun bref vers Thomas du lees fait par Richard soun ael a Roggier de Horle a terme qe passé est, et recovery le terme de la Trinité[18] l'an xxxv^to^ ;[19] et desicome il recoveri les tenementz de plus haut dreit auxint deschargez[20] com il esteint[21] qaunt soun ael[22] les lessa, par quel recoverir la charge fait[23] en le meen temps[24] esteint, jugement s'il pussent pur cel service esteint par nostre recoverir avowrie faire.

[1] *Vulg.* p. 24. Text from *A*: compared with *B*, *R*, *P*. The second headnote from *P*. [2] N. *R*, *P*. [3] Horlee *B*, *Vulg.*; Horle *R*; Howel *P*. [4] chartres *Vulg.* [5] soil *R*, *P*; fusille *B*. [6] tendrell' *B*; trendles *P*. [7] termes par owel portioun *R*. [8] du *B*, *R*; del *P*. [9] moudre *B*. [10] ces *A*. [11] ces *A*. [12] molture *R*; mouture *P*. [13] qi *A*. [14] *Om. last sentence*, *R*, *P*. [15] Howel *P*. [16] terme de sa vie *P*. [17] Unfrei *R*; William *P*, *and so below*. [18] *Om.* la Trinité *A*, *B*, *Vulg.*; *ins. R*, *P*. [19] l'an le Roi qe mort est xxxv. *P*. [20] descharge *A*. [21] passerent *P*. [22] auncestre *R*, *P*. [23] fete *R*, *P*. [24] *Ins.* est *R*; fut *P*.

55. NEUDEGATE *v.* ATTE LOGGE.[1]

Replevin by *A* against *X*, who avows upon *M* for services. Plea by *A* that by judgment after verdict he recovered the tenements from *M*, as from a termor holding over after a term expired, which term was created by *B*, an ancestor of *A*. The avowant (*X*) desires to rely on a title which involves the assertion that *B* was never seised. *Qu.* whether, in face of the record of the recovery, he can do this, without or with the assertion that the recovery was collusive.

William of Neudegate complained that Roger wrongfully took his chattels: to wit, the spindle of his mill and the conduit-pipe of his mill and two rundels etc.

Passeley. Roger avows the taking good upon one Thomas the Miller, for that Thomas holds of him a messuage and a mill and four acres of land and two acres of meadow by fealty and by the services of fourteen shillings a year to be paid at four equal terms and of [suffering Roger's] taking half the fish caught in the mill pool and of grinding [Roger's] corn grown on his demesne lands free of multure, of which services [Roger] was seised by the hand of Thomas etc.; and because the rent of one term was arrear he avows, for he could find no other distress. (And because [William] counted that [Roger] was still seised of the chattels, [Roger] at the bar [of the Court] gaged delivery of them.)

Willoughby rehearsed the avowry and said that the tenements, whereof [Roger] demands this rent, were once in the seisin of Richard of Neudegate, grandfather of William the plantiff; and [Richard] out of his seisin leased them to one Robert[2] of Horley for a term of years; and Robert out of his seisin leased them to one Alfred the Miller in fee at a rent of fourteen shillings a year. Alfred died. After his death entered Thomas the Miller, upon whom [Roger] avows, as son and heir. So William, the now plaintiff, brought his writ against Thomas on the lease made by Richard, [William's] grandfather, to Robert of Horley for a term that had expired; and, in Trinity term in 35 Edward I., he recovered the tenements; and since he recovered them by superior right, discharged as they were when his grandfather leased them, and by this recovery any charge that was made in the meantime was extinguished, we pray judgment whether they can make avowry for a service extinguished by our recovery.

[1] Proper names from the record.

[2] He is Roger throughout the report.

Pass.[1] La ou il dit qe Richard soun ael lessa les tenementz a Rogier a terme des aunz,[2] nous vous dioms qe l'Abbé de Cherdesei[3] fust seisi des tenementz avauntditz, qi hors de sa seisine enfeffa Roggier et Waultier soun friere et a les heirs Roggier. Roggier survesquit et dona les tenementz a Aumfrey le Mouner,[4] fesant par an xiiij. sous.[5] Et desicome nous voloms averrir qe Roggier avoit dreit et fee et tiel estat qu'il poet[6] charger, jugement, si nous ne ne pussoms pur ceaux services bon avowrie faire.

Willeby. Adeprimes seoms nous a un del jugement qe fut rendu, qe del houre qe nous tendoms d'averir par recorde qe nous recoverimes les tenementz vers Thomas par vertue du lees fait a Roggier par Richard nostre ael a terme des aunz,[7] jugement si encountre le recorde devetz al averement estre receu.

Hervi.[8] Vostre resoun[9] poet avoir double entendement, qe[10] vous dites qe l'Abbé dona a Roggier issint[11] qe Richard ael William[12] reinz avoit,[13] ou qe Richard lessa a Roggier a terme des aunz[14] et qe[15] l'Abbé happa pus les tenementz a lui et pus refeffa Roggier en fee et Rogger outre a[16] Aumfrey.[17] En tiel cas ceste charge se esteindera par le purchace William par recoverir de[18] plus haut dreit. Par quai etc. r[esponez] outre.[19]

Pass. L'Abbé enfeffa Roggier en fee, et Rogger Aumfrey fassaunt[20] xiiij. s. par an etc., sauntz ceo qe Richard ael William unqes rien en out,[21] prest etc.

Willeby. Nostre[22] recorde testmoigne qe William[23] recoveri par vertue du lees fait a Roggier par Richard nostre ael, dount vous ne serretz pas receu al averrement countre recorde qu'il n'avoit rien.

Pass. Il alegge un jugement, a qi nous ne sumes point partie, par quai il bosoigne qe nous eoms l'averrement; qe[24] poet estre qe William siwi le bref d'entré entre luy et Thomas par collusion pour estendere[25] la rente, et nous ne poums estre partie a porter l'atteinte ne reverser le jugement, s'il soit aultre qe bon. Par quai etc.

Herle. Vous tendetz d'averir qe nostre auncestre, de qi nous pernoms[26] nostre tittle en le bref d'entré, unqes riens n'avoit.[27] A

[1] *Ins.* Nous avons pas mestier a pleder a ceu recoverir, *R. Sim. B, P.* [2] terme de vie *substituted for* terme des anz *P.* [3] Cherteseye *B*; Certeseye *R* [4] *Ins.* en fee *P.* [5] fesaunt a ly et a ces heirs etc. les services par les quex il ad avowe *R, P.* [6] pout *B, R, P.* [7] terme qe passe est *P.* [8] Herin *Vulg.*; Herle *P.* [9] respounce *P.* [10] qar *R, P.* [11] *Ins.* qe put estre entendu *P.* [12] W. ael Rich.' *B, Vulg.* [13] navoit *B, R, P.* [14] de vie *substit. for* des anz *P.* [15] qi *A.* [16] *Om.* a *B, Vulg.* [17] *Ins.* fesaunt les services avauntdiz *R, P.* [18] cas les services sont esteyntz par le recoverer William de *R. Sim. P.* [19] Par qei il covent respoundre outre *P.* [20] fesant *R*; fesaunt *P.* [21] naveit *R.* [22] Vostre *A.* [23] Willeby *A.* [24] qar *R, P.* [25] esteyndre *R, P*; esteindre *B.* [26] preymes *R.* [27] avoit *P.*

Passeley. We have no need to plead to this recovery. But, whereas he says that Richard his grandfather leased these tenements to Robert for a term of years, we tell you that the Abbot of Chertsey was seised of them, and out of his seisin enfeoffed Robert, and Walter his brother, and the heirs of Robert. Robert outlived [Walter] and gave the tenements to Alfred the Miller at a rent of fourteen shillings. And since we will aver that Robert had right and fee and such an estate that he could charge [the tenements], we pray judgment whether we cannot make a good avowry for these services.[1]

Willoughby. In the first place, let us be at one about the judgment that was rendered. Since we tender to aver by record that we recovered the tenements against Thomas by virtue of the lease made for a term of years by Richard our grandfather, we pray judgment whether you can be received to this averment against the record.

Stanton, J. [to the avowant's counsel]. Your answer can have a double meaning. It may mean that the Abbot gave to Robert so that Richard, William's grandfather, never had anything, or it may mean that Richard leased to Robert for a term of years and that afterwards the Abbot 'happed' the tenements for himself and then enfeoffed Robert in fee and that Robert [leased] to Alfred. In this [latter] case the charge[2] would be extinguished when William acquired the tenements by a recovery by superior title. So you must answer over.

Passeley. The Abbot enfeoffed Robert in fee, and Robert enfeoffed Alfred at a rent of fourteen shillings a year, without (*absque hoc*) Richard, William's grandfather, ever having anything. Ready etc.

Willoughby. Our record witnesses that William recovered by virtue of the lease made to Robert by Richard [William's] grandfather; and so you shall not be received against the record to aver that he [Richard] had nothing.

Passeley. He alleges a judgment to which we were not party; so it behoves that we should be allowed our averment; for it may be that William sued the writ of entry by collusion between him and Thomas to extinguish the rent; and, if the judgment be not good, we cannot be party to reverse it or to attaint [the jurors]. Wherefore etc.

Herle. You tender an averment that our ancestor, from whom we took our title when we brought this writ of entry, never had

[1] It appears from the record that the avowant asserted that he had acquired the rights of Robert. The report does not allow us to see the connection between Robert and the avowant.

[2] That is, the charge created by the payment of rent to the avowant and his predecessor in title.

ceo ne devetz avenir, qe le jugement qe se fit en ceste court testmoigne le revers. Et d'aultrepart en le bref d'entré trové fust par verdit qe nostre auncestre lessa[1] et cel[2] estat recovery,[3] et si vous ore fussetz receu al averrement qe nostre auncestre ne fust unqes seisi, donqes par cas serra[4] l'un averrement[5] defet[6] par l'autre, qe serroit inconvenient. Par qi etc.

Pass. Le plee del bref d'entré qe W. porta fut par collusioun entre luy et Thomas le tenaunt, vers qi il recovery. Dount, desicome il nous[7] fait estraunge a cel jugement et nous ne poums recoverir par cel averrement, nous sumes[8] sauntz recoverir.[9] Par qi etc.

Note from the Record.

De Banco Roll, Michaelmas, 2 Edw. II. (No. 173), r. 129, Sur.

William of Neudegate brings replevin against Roger atte Logge and others, counting that on Wednesday next after the octave of the Nativity of St. John the Baptist in 35 Edw. I., at Horle, in William's mill, they took a spindle, two rundels, and a conduit-pipe (*unum fusillum et duos rundellos et unam clusam*), to his damage, laid at twenty shillings.

Roger answers for himself and the other defendants. He says that Thomas of the Mill (*de Molendino*) holds of him a messuage, a mill, four acres of land, and two acres of meadow in Horley by fealty and the service of 14*s.* 8*d.* a year, and by rendering half the fish caught in the mill pool, and by the service of milling his (the avowant's) corn quit of toll; and that the avowant was seised of these services by the hand of Thomas; and that, as forty-four pence were arrear, he took the chattels as well he might.

The plaintiff says that the avowant cannot avow the taking as lawful. For he says that the mill with the messuage and one acre of land and one acre and a half of meadow were at one time in the seisin of one Richard his grandfather (whose heir he is), who demised them to Robert of Horley for a term of years; and that this Robert afterwards alienated them to one Alfred the Miller (*Aluredo le Mouner*), father of the said Thomas, whose heir [Thomas] is, to hold to him and his heirs by the said services; and that the plaintiff afterwards brought here in court a writ of entry against Thomas, alleging that he had no entry unless after (*post*) the demise which Richard, the plaintiff's grandfather, made to Robert [of Horley] for a term which had expired; and that the avowant and Robert here in court reci-

[1] *Ins.* et par consequent qil fut seisi *P*, *interlined.* [2] et de tiel *R.* [3] recoverimes *R*; recoverymes *P.* [4] serreit *R.* [5] serroit une enqueste *P.* [6] atteynt *R.* [7] vous *R.* [8] jugement nous entendoms qe nous averoms l'averement qar autre nous serroms *B*, *Vulg.* [9] jugement, et nous ne pooms attendre ne sertefier etc. dount si nous ne seoms al averement receu nous sumes sauntz recoverir qe serreit duresse *R*; jugement, et nous ne pooms ateyndre ne certifier rienz encontre le jugement ne le verdit, si nous ne seioms receu encontre le verdit al averement, nous serroms sauntz recoveryr a touz jours *P.*

anything. To that you cannot get, for the judgment made in this court testifies the contrary. Moreover, in the writ of entry it was found by verdict that our ancestor leased, and therefore that he was seised, and this estate we recovered. And, if now you were received to aver that our ancestor was never seised, then it might be that the one averment would be defeated by the other, and this would be a contradiction. Wherefore etc.

Passeley. The plea by writ of entry which William brought was brought by collusion between him and Thomas the tenant, against whom William recovered. Therefore, since he makes us a stranger to this judgment so that we cannot proceed by attaint or certification,[1] we take it that we shall have this averment, for otherwise we should be without recovery. Wherefore etc.

Note from the Record (*continued*).

procally (*hinc inde*) put themselves on a jury of the country, by which it was found that Richard, the plaintiff's grandfather, demised the tenement to Robert only for a term of years; and that therefore it was adjudged that the plaintiff should recover his seisin against Thomas.

The plaintiff's plea continues thus:—And since the plaintiff now is seised of the tenements by the said judgment as of those that he recovered on the seisin of his ancestor Richard of a time more ancient than that at which they were burdened with the said services by Robert's alienation, and since the plaintiff now holds them disburdened in the state in which they were in the time of the plaintiff's ancestor Richard, the plaintiff demands judgment whether by the deed of Robert, whose seisin was annulled by judgment of the King's court, the avowant can avow the taking upon the said Thomas for the said service.

The avowant replies that at one time the tenements were in the seisin of the Abbot and Convent of Chertsey; and that they thereof enfeoffed one Walter, parson of the church of Horley, and the said Robert his son, to hold to them and the heirs of Robert, of the Abbot and his successors, by fealty and the service of 5*s.* a year etc., and that Robert outlived Walter and enfeoffed Alfred the Miller, father of Thomas (whose heir Thomas is), to hold of Robert and his heirs by the services stated in the avowry; and that afterwards an ancestor of the avowant purchased the said services from Robert; and that upon the assignment Alfred attorned himself; and that the avowant's ancestors were seised of the services by the hands of Alfred; and that likewise the avowant was seised by the hands of Thomas; and the

[1] Certification is a process for setting right an obscure or insufficient verdict; the jurors are brought back to 'certify' the court.

Note from the Record (*continued*).

avowant demands judgment whether by any plea or judgment had here in court between William's ancestor Richard and Thomas, to which plea the avowant was no party, he can be repelled from avowing the said taking for services whereof he and his ancestors were seised as aforesaid. And he also says that Robert purchased the tenements from the Abbot in form afore-

56. ANON.[1]

Dower ou le tenaunt fut receu a l'averement qe le baroun fust unqes seisi etc., nient aresteaunt un fyne qe la femme alegga entre le tenaunt et le baroun qe prova sa seisine.

Nota en[2] un bref de dower qe le tenaunt serra receu a dire qe le baroun la femme ne fut unqes seisi issint qe dower la pout, tot die la femme q'une fine se leva entre soun baroun et le tenaunt, la quele testmoigne le rendre et par taunt seisi.[3] Est la cause purceo qe la fyne ne testmoigne mye le quel ele se leva après les esposales ou avaunt, et *per consequens* la fyne nient enblemy etc.

{*Hervy.*[4] Put estre qe la fyne se leva avant les esposales. Par qei l'averement est recevable.

Et fut receu. Et graunta la moyté dez genz ou les esposales se firent, et l'autre moyté del counté ou la terre est, issint qe lez genz de l'un countee et de l'autre puissent la conisance avoir.}

57. BARDOLF *v.* THE PRIORESS OF B.[5]

Bref de custumes et de servises de la seisine le demaundaunt porté par ly qe n'avoit estat si noun fraunc mariage, et maintenu. *Respice quia difficile.*

Thomas Bardolf porta soun bref *de consuetudinibus et serviciis* vers la Prioresse de B. en ceste forme:—Precipe A. Prioresse de B. quod iuste etc. faciat T. consuetudines et recta servicia que ei facere debet de libero tenemento quod de eo tenet in W. ut in redditibus, arreragiis etc.

Ceo vous moustre T. de Bardolf, qe ci est, qe A., qe illecqes est,

[1] *Vulg.* p. 25. Text from *A*: compared with *B*, *D*, *P*. [2] ou *A*. [3] *Ins.* et *B*, *D*. [4] In *P* what follows takes the place of the last sentence. [5] *Vulg.* p. 26. Text from *A*: compared with *B*, *D*.

Note from the Record (*continued*).

said, so that Richard, William's ancestor, was never seised thereof; and this he is ready to aver etc.; and he demands judgment.

A day is given to the parties on the octave of Hilary, 'saving to them their reasons etc.' There is no formal joinder in demurrer, and there is no such allegation of collusion as the report might lead us to expect.

56. ANON.

Dower. Husband's seisin during coverture not proved by a fine since the fine does not give the date of the marriage. A jury from two counties awarded.

Note that in a writ of dower the tenant shall be received to say that the woman's husband was never seised so that he could endow her, albeit the woman says that a fine was levied between the husband and the tenant, which fine testifies the render and therefore the seisin. And the reason is that the fine does not say whether it was levied before or after the espousals, and consequently the fine would not be blemished [by the tenant's allegation].

{[1] Stanton, J. Perhaps the fine was levied before the espousals. Therefore the averment is receivable.

And it was received. And [Stanton, J.] ordered that half the jury should come from the place where the espousals occurred and half from the place where the lands lay, for[2] the folk of both places may have cognisance of the matter.}

57. BARDOLF *v.* THE PRIORESS OF B.[3]

A writ of customs and services can be brought by a lord who has only an estate tail in the seignory. *Qu.* whether he could bring a *cessavit*. The various forms of the writ of customs and services discussed.

Thomas Bardolf brought his writ of customs and services against the Prioress of B. in this form:—'Command A., Prioress of B., that justly and without delay she do to T. the customs and right services which she ought to do for the free tenement which she holds of him in W., as in rents, arrearages, etc.' [And Thomas counted in manner following]:—Showeth to you T. de Bardolf, who is here, that A., who

[1] From an alternative version. [2] But the French is *issint qe*.
[3] This case is Fitz., *Droyt*, 28.

a tort ne luy fait custumes et dreits services qe faire luy deit del fraunctenement qu'il de luy tient en W. Et purceo atort qe la ou ele tient de luy taunt de terre en la ville avaundit ove les apurtenaunces par feaulté et par les services de un chapon par an et par sewt a sa court de iij. s[emaines] en iij. s[emaines], des queux services il fust seisi par my la meyn Johanne jaditz Prioresse de B. predecessour mesme ceste A., com par my la mayn etc., nomement de la rent, en soun demene com de fee et de dreit en temps de pees etc., pernaunt les esplez com en arrerage de rente et en amercimentz de court par defautes etc. et en aultre maniere de issue de services et de fealté mountaunt etc., come de fee et de dreit, des queux services il fust seisi desqes ore a viij. aunes, qe cest Prioresse le dedit faire le [1] et umqore fait, a tort et a ses [2] dammages ; e s'il le veot dedire il en ad seute bone.

La Prioresse defendi [3] tort et force et les dammages etc. et dit qu'il ne dust estre respoundu a ceo bref, purceo qe ceo est un bref de dreit, et il counte de sa seisine demene com de fee et de dreit, et il ne poet nul bref qe soit si haut en le dreit user,[4] purceo qu'il n'ad estat forsqe de fraunctenement come de choce doné en fraunc mariage a luy et a sa femme. Jugement, si a cesti bref deive [5] estre receu.

Kyngesham.[6] Il i ad brefs de costumes et des services de diverse natures, qe asquns sount brefs de dreit qe volent par bataille ou [7] par graunt assise estre terminé. Tiel bref ne poet nul user forsqe celuy qi de cler dreit porra parler. Ascuns sount mixt en la possessioun, et ceo est en diverse forme, qe ascuns sount portez de la seisine le demaundaunt par my la meyn le deforceour, et en tiel bref serra le *debet* et le *solet*. Ascunes sount portez de la seisine soun auncestre al demaundant taunsoulement, et serra dit en tiel bref le *debet* sauntz le *solet*, com de cesti bref, et serra counté par mi dammage pur [8] la possessioun. Par quei nous entendomps qe cesti bref, qe veot estre terminé en la possessioun, purra homme bien user saunt ceo qu'il ne put [9] le dreit trier. Et depus qe vous grauntez [10] d'avoir tiel estat [11] qe nous pussoms le fraunctenement trier et la possessioun, et ne [12] r[esponez] mie a nostre seisine, la qel nous voloms averrir, jugement de vous com de noun defendu.

Suttone. Qi [13] estes vous qe [14] cesti bref pusset user ? Et pus r[esponez] ou grauntez qe vous n'avez [15] aultre estat qe fraunctene-

[1] les services *B.* [2] ces *A.* [3] deffent *B* [4] usier *B.* [5] doine *Vulg.* [6] Kyng *B* ; Kyngkesham *D.* [7] *Om.* par bataille ou *B, D, Vulg.* [8] par *B, Vulg.* ; pur *D.* [9] puisse *B, D.* [10] vous avetz grante *D.* [11] davoir ceo *B, Vulg.* [12] trier et a la posesion ne *D.* [13] qe *A.* [14] *Sutt.* Festes vous tiel qi *B, Vulg.* [15] navietz *B, Vulg.* ; navetz *D* ; navoit *A.*

is there, wrongfully does not to him the customs and right services which she ought to do for the free tenement which she holds of him in W.; and wrongfully for this reason, for whereas she holds of him so much land in the said vill with the appurtenances by fealty and by the services of a capon every year and by suit to his court from three weeks to three weeks, of which services he was seised by the hand of Joan, sometime Prioress of B., predecessor of the said A., as by the hand [of his very tenant], to wit, of the rent, in his demesne as of fee and of right in time of peace etc., taking the esplees in arrearages of rent and in amercements of court for defaults etc., and in other manner of issues of fealty and service amounting etc., as of fee and of right, and of which services he was seised until, eight years ago, this Prioress refused to do them and still refuses, wrongfully and to his damage. And if she will deny this, he has here good suit.

The Prioress defended tort and force and the damages etc., and said that he ought not to be answered to this writ, for that it is a writ of right and he counts of his own seisin as of fee and of right; and he can use no writ that is so high in the right, for he has only an estate of freehold as of a thing given in frankmarriage to him and his wife. Judgment, whether he ought to be received to this writ.

Kyngesham. Writs of customs and services are of divers natures, for some of them are writs of right which are to be terminated by battle or the grand assize; and such a writ none can use except one who can speak of the clear right. Others are mixed in the possession [1] and that in divers ways, for some are brought on the seisin of the demandant by the hand of the deforciant, and in such a writ there shall be the words *debet* and *solet*. And others are brought only on the seisin of an ancestor of the demandant, and in such a writ there shall be the *debet* without the *solet*. And such is the case of the present writ [*i.e.* it is in part possessory], and the count upon it shall make for damages [as for an infringement of] possession. Wherefore we take it that a man may well use this writ which makes for a possessory termination, without his being able to bring the right [2] to trial. And since you concede to us that we have such an estate that we could bring to trial the freehold and the possession, and since you do not answer to our seisin which we are willing to aver, we pray judgment of you as of one who is undefended.

Sutton. Who are you that you should use this writ? You must first answer, yes or no, whether you have any other estate than a

[1] Are partly possessory.

[2] As opposed to possession.

ment ove Johanne vostre femme; et pus demorroms en jugement. Et d'aultrepart, par quei etc. a vous et a vostre femme en fraunc mariage etc. prist etc.[1]

Berr. Par cel averrement n'averez issue de plee, purceo qe[2] fraunk mariage est entendu condecioun etc. Et ne quidetz qe celuy qe tient en fraunc mariage ne pusse cesti bref user?

Souttone. Issi entendoms nous, qar il ne pount porter nul bref qe soit de plus haut[3] nature qe soun[4] estat demene;[5] qar depus qe le desclamer est bone r[espounse][6] en tiel bref, et il ne poet porter bref de dreit a demaunder les tenemenz en demene, mès qe la Prioresse desclamast en cesti bref, vous n'averez nul avauntage par cel desclamer. Et purceo qu'il ne poet user nul bref de dreit sauntz[7] le[8] issue en qi le fee et le dreit doit reposer, par quei il semble q'il covent qe le issue[9] y fust joint ove luy en le bref. Et purceo[10] q'il nest mye, jugement etc.

Berr. Unqore n'avetz rien dit par quei il est mestier qe le heir veigne. Nepurqaunt aschune choce devetz[11] dire vers Thomas qe covendreit qe[12] le heir fust joynt. Et qaunt al desclamer, jeo vous respoigne qe en chescun declamer le tenaunt ne irra mye quites de la court meyntenaunt par soun desclamer, qar si homme descleyme vers[13] Johan qe tient par la ley d'Engleterre[14] ou vers femme qe tient en dower,[15] il ne serra mye quite taunttost, purceo qe la femme dirroit q'ele ne porra estre partie a si haut r[espounse] doner, qe doune actioun a pleder en le dreit, et priereit[16] eyde del heir a qi accioun acrest par le desclamer, ou il serroit boté outre[17] a r[espoundre] a la seisine, a quel averement la femme ne porra mye estre partie.

Sottone. Nient plus me[18] semble[19] qu'il serra r[espoundu] a cesti bref qu'il ne r[espoundreit] si le bref fust porté vers luy. Mès si etc., jammès ne agarderoint[20] justices qu'il r[espoundreit][21] a cesti bref.

[1] mariage r' etc. *B, D, Vulg.* [2] qen *B, Vulg.*; qe en *D.* [3] haut *inserted by later hand, A.* [4] qe de lour *B.* [5] *Ins.* nest *D.* [6] bone etc. *B, Vulg.* [7] *Rep.* sauntz *A.* [8] *Om.* le *B, Vulg.* [9] *Om.* en qi le . . . issue *Vulg.* [10] *Rep.* et purceo *A.* [11] poez *B, Vulg.*; put *D.* [12] et *Vulg.* [13] *Om.* homme . . . vers *B, Vulg.* [14] diengleterre *A.* [15] *Ins.* une desclam' *B, Vulg.* [16] prient *B, Vulg.* [17] *Om.* outre *B, Vulg.* [18] ne *B, Vulg.* [19] *Ins* il *B, Vulg.* [20] agardirent *B, Vulg.*; agardereint *D.* [21] respondra *D.*

freehold along with your wife Joan, and after that we will demur in judgment. [And we will aver that the tenements were given] to you and to your wife in frankmarriage.[1] Ready etc.

Bereford, J. By this averment you will not get to an issue of the plea, for in frankmarriage a condition is understood etc. And do not you think that one who holds in frankmarriage can use this writ?

Sutton. We think that he cannot, for he can bring no writ which is of a higher nature than his own estate; for, since a disclaimer is a good answer in this writ, and he cannot bring a writ of right to demand the tenements in demesne, in case the Prioress were to disclaim in this writ, you would have no advantage by the disclaimer.[2] And because he can use no writ of right without the issue [of the marriage], in whom the fee and the right repose, therefore it seems that the issue [of the marriage] should be joined with him in the writ; and, as that has not been done, we pray judgment.

Bereford, J. As yet you have said nothing which makes it needful that the heir should come. None the less you ought to say something against Thomas to show that the heir ought to be joined with him. And as to the disclaimer, I answer you that in a disclaimer the tenant shall not always go quit out of the court straightway upon his disclaimer; for, if a man disclaims against one who is tenant by the curtesy or against a woman who holds in dower, he shall not be quit at once; for the woman may reply that she cannot be party to so high an answer, which gives an action to be pleaded in the right, and she would pray aid of the heir to whom an action accrues by the disclaimer, or he will be forced to answer over to the seisin [alleged by the demandant], to which averment the woman cannot be a party.[3]

Sutton. It seems to me that he shall no more be received to this writ than he would [have to] answer if this writ were brought against him; but if [this writ were brought against him] the Justices would never award that he should answer to this writ.

[1] The structure of this sentence is uncertain.

[2] The writ of customs and services was regarded as the droiturel remedy for a lord if the tenant refused services. One general feature of the action was that, if the tenant disclaimed holding of the demandant, the demandant could bring a writ of right to recover the tenements in demesne. The question in the present case is whether the writ of customs and services lies for one who has only an estate of frankmarriage in the seignory. The tenant urges that it does not, for a disclaimer could not have its ordinary effect, namely, that of enabling the demandant to bring a writ of right for the land in demesne.

[3] But see the account of this dictum in App. II. § 1.

Berr. Quel mestier i ad il qe le heir veigne depus qe vous ne dites rien a qei Thomas ne put estre partie?

Sottone. Si la Prioresse ust cessé par ij. aunz, par quei Thomas ust porté le *cessavit*[1] pus le temps, serroit il r[espoundu] a ceo[2] bref sauntz le heir? Noun serroit.[3] Moult plus par decea.

Warr. Aliud est etc., qar le *cessavit* est tot en le dreit et en la possessioun.

Berr. Par quel voi vendra Thomas a soun services s'il soit ousté de cesti bref?

Sottone. Par destresse.

Berr. Par aventure il n'est mie de poer[4] de[5] destreindre, ou il ne siet ou fair la destresse. Par quei il est chacé a cesti bref.

Sottone. Pur quei ne ust il porté la novele diseisine?

Berr.[6] Qu'il[7] convendreit primes avoir destreint et q'il ust counterpledé[8] etc.

Hawarde. Graunte merveille serroit ceo de lay si celuy qe n'ad forsqe fraunctenement par purchace[9] de[10] fraunemariage porra porter bref de dreit.

Berr. Il vous dit qu'il est feffé a luy et a les heirs de soun corps engendrez, et vous n'abaterez cesti bref si vous ne ly voletz doner meillour bref. (Et pus dit privement q'il vit une foitz un tiel bref estre porté et celuy qe counta le counte counta de sa seisine en soun demene com de fee et lessa le 'dreit' et fust chacé pur la omissioun[11] del 'dreit' al 'debet' et fut receu,[12] qe sur un bref porrunt diverse countes[13] estre formez. Par quei solom le cas si covent qe homme counte et soun counte former sur soun dreit.)

Et le bref estuit,[14] et la Prioressa traversa la seisine, et les aultres le revers etc.[15]

[1] *Ins.* per biennium *B*, *Vulg.* [2] soun *B*, *Vulg.* [3] *Om.* from here to the beginning of Bereford's next remark and read that as part of Sutton's speech, *B*, *D*. [4] nad mye pouer *B*, *Vulg.* [5] *Om.* de *A*; de vous *D*. [6] *Ascribed to* Hervi *B*; Herin *Vulg.* [7] pour ceo qil *B*, *D*, *Vulg.* [8] encountreplede *D*. [9] *Om.* par purchace *B*, *Vulg.* [10] en *B*, *D*, *Vulg.* [11] commissioun *A*. [12] *sic A*; respoundu *B*, *D*. [13] *Om.* countes *B*, *Vulg.* [14] *Or* estint *A*; estut *B*, *D*, *Vulg.* [15] le bref estut quod mirum fuit *D in margin.*

BEREFORD, J. What need is there that the heir should come when you have said nothing to which Thomas cannot be a [sufficient] party?

Sutton. If the Prioress had ceased [the services] for two years, and after that Thomas had brought the *cessavit*, would he be received to that writ without the heir? He would not. Much less[1] in this case.

Warr. That is a different matter, for the *cessavit* lies altogether in the right [and this writ lies] in the possession.[2]

BEREFORD, J. By what way will Thomas come by his services if he be ousted from this writ?

Sutton. By distress.

BEREFORD, J. Peradventure he is not of power to distrain, or he does not know where to distrain; so he is driven to this writ.

Sutton. Why has he not brought the novel disseisin?

BEREFORD, J. In that case he would first have had to distrain, and [the other party] would have counter-pleaded.

HOWARD, J. It would be a great wonder in the law if one who had only a freehold by purchase in frankmarriage could bring a writ of right.

BEREFORD, J. He tells you that he is enfeoffed to him and to the heirs of his body begotten, and you will not abate this writ unless you can give him a better. (And then he [BEREFORD] said in private that he once saw such a writ brought, and he who counted the count counted of his own seisin in his demesne as of fee, and omitted 'of right' and was driven by the omission of the right to the *debet* and was answered.[3] For upon one and the same writ[4] various counts can be formed, for a man must count according to the facts of the case and suit his count to his right.)

And the writ stood,[5] and the Prioress traversed the seisin, and the others joined issue etc.

[1] Literally 'much more.'
[2] Translation doubtful.
[3] Or perhaps 'and was received.'
[4] Or perhaps 'and it was answered that upon one and the same writ.'
[5] One MS. adds 'which was strange.'

58. ANON.[1]

Ou piert qe purchace le seignour paramount del demeine, la seignourye se esteint de alteil service, mès des sourplus avera il avowerie com de rente sekke.

Si[2] Hervi de Stauntone tient de Sire William de Berr[eforde] et il[3] de Sir William Houuard par un mesme service, et pus Sir William Houuard purchacea mesmes les tenemenz de Sir Hervi[4] a tenir par forme de statut de Sirre William de B[erreforde], *questio* si Sir William de B. poet destreindre Sire W. Houuard.

Berr. Dit qe nanil,[5] qe si un tenaunt tient du Roi par meen, et le Roi purchace les tenemenz en demene, la seignurye[6] est esteint, qar il ne poet estre[7] seignour et[8] tenaunt de une mesme service. Auxi me semble il par decea.

Hervi.[9] Dur serroit si le chief seignour immediate perdra[10] ses[11] services par altri purchace.

Berr. Il n'y ad[12] en ceo cas aultre maniere a[13] pleder, fors desclore la verité et dire q'il mesme qe destreint tient mesmes les tenementz de vous ou la prise fut fait et par mesmes les services qu'il demaunde, ' et demaundoms juggement si[14] pusse pur mesmes les services dount il est[15] soun tenaunt destresse avower ; ' depus qe qaunt a un regard il ne poet estre seignour et tenaunt ; mès ore tient il de luy par tieus services etc. Mès si issi soit qe le tenaunt soit chargé de plus de rente vers le seignour immediate q'il[16] vers le chief seignour mediate, si poet il destreindre pur le surcharge et nient pur mesmes les services. Qar[17] sa seignurye en dreit des services par queux il tient de luy si est esteint par[18] le purchace le chief seignour mediate,[19] pur ceo qu'il ne put estre seignour et tenaunt qaunt a un regarde.

Hervi.[20] S'il pusse destreindre pur soun surcharge,[21] unqore demurt il tenaunt.

Berr. Non est inconveniens respectu[22] diversorum.

[1] *Vulg.* p. 27. Text from *A* : compared with *B*, *D*. [2] *Ins.* Sire *D*. [3] *Ins.* come meen *B*, *Vulg*. [4] Herin *Vulg*. [5] navil *Vulg*. [6] seigneurage *B*. [7] *Om.* estre *A*. [8] estre meen et *B*, *D*, *Vulg*. [9] Herin *Vulg*. [10] perdroit *B* ; perdreit *D*. [11] ces *A*. [12] *Om.* Il n'y ad *Vulg*. [13] de *B*. [14] sil *B*, *D*. [15] et *A*. [16] qe B, D. [17] mes *B*, *Vulg*. [18] pur *A*. [19] immediatus *D*. [20] Herin *Vulg*. [21] soucharge *A*. [22] receu *Vulg*.

58. ANON.

C holds of *B* at a rent of ten pounds and *B* of *A* at a rent of four. If *A* purchases the tenement from *C*, the mesne seignory is extinct; but *B* is entitled to a rent of six pounds, for which he can distrain.[1]

If Sir Hervey of Stanton holds of Sir William of Bereford and he of Sir William Howard by the same service, and then Sir William Howard purchases the tenements of Sir Hervey to hold by the form of the Statute [*Quia emptores*] of Sir William of Bereford—Question, whether Sir William of Bereford can distrain Sir William Howard?

Bereford, J., said No, for if a tenant holds of the King with a mesne between them, and the King purchases the tenements in demesne, the seignory is extinguished, for he cannot be both lord and tenant of one and the same service. And so it seems to me in this case.

Stanton, J. It would be hard if the chief lord immediate[2] were to lose his services by another man's purchase.

Bereford, J. In this case there is no way of pleading except to disclose the truth, and to say that the person who is distraining holds the same tenements, in which the taking was made, of you by the same services which he demands, and then you pray judgment whether he can avow a distress for the same services by which he holds of you, since in respect [to the same services] he cannot be both lord and tenant. Such is the case where the services are the same. But if the case be that the tenant is charged with more rent to his lord immediate than the latter owes to the chief lord mediate, then, [after the purchase, the person who was mesne] can distrain for the surplus, and not for the same services [that he himself owes]; for as regards the services that he owed, the seignory is extinguished by the purchase [made by] the chief lord mediate, for he cannot be both lord and tenant in one and the same respect.

Stanton, J. If [the person who was mesne] can distrain for his surcharge, then he [the purchaser] still remains tenant.

Bereford, J. There is no inconsistency; there is a diversity of respects.

[1] See Litt. sec. 231–2.

[2] *C* holds of *B*, who holds of *A*. Here *B* is [*C*'s] 'chief lord immediate,' and *A* is [*C*'s] 'chief lord mediate.'

Hervi.[1] Si un aultre[2] li destreigne, en ceo cas pur le soutcharge[3] ne poet le chef seignour mediate porter soun bref de meen[4] vers le seignour immediate ?

Berr. Noun poet, qar ceo bref ne gist pas si noun entre seignour et verrai tenaunt. Mès en ceo cas il n'est mye soun verrai tenaunt, qar par cel service, scilicet,[5] la rente il[6] n'avera ne garde, ne mariage, ne eschiet, et dount[7] la seisine de cel sek rente ne lie nient, par *Berr.*[8]

59. MELDON *v.* BEAULIEU (ABBOT OF).[9]

Replegiari, ou il avowa sour ij. en comune la ou l'un fut purchacour et la parcenerie defet. Et l'avowerie abata. Ou piert si homme n'eyt fait a descharger sa tenaunce il r[espondra] a la seisine.

Replegiari, ou l'avoweré fuist fait sour ij. en comune, scil. sour P. et sour un autre, ou P. fuist estraunge purchaceour de la moité des tenemenz, et demaunda jugement del avoweré de ceo q'il avowa sour eux en comune come sour parceniers ou la parcenerie fuist defait par le purchace etc ; et au dreyn P. dit q'il receut sa feauté et ses services come etc. et demaunda jugement *ut supra.* Par quei il eust ses avers quites et l'autre en la mercy.[10]

Michel de Meldone se pleint qe l'Abbé de Beaulé le Roy a tort prist ses[11] avers, nomement etc., en le haut estré[12] nostre seignour le Roy en tiel lieu etc.

Est.[13] pur l'Abbé avowa la prise etc. en Langeley en certeyn lieu q'est appellé Langeforde, et ne mye en le haut estré nostre seignur le Roi etc. ; et pur la resoun q'un Robert Aleyn jaditz tient ceaux tenementz ou la prise fust fait ensemblement ov altres tenementz en mesme la ville d'un William jaditz Abbé de B., predecessour mesme cesti Abbé, par homage et faulté et service de x.[14] s. par an et par les services de trover un charette a carier ses[15] blees en Aust par iiij. jours a ses[16] coustages, et par ij. arures par an a la volunté le dit Abbé quel houre qu'il serroit garny ; des queux services l'avaundit W. Abbé, predecessour etc., fust seisi[17] etc. l'avaundit Robert com etc. ; de qel Robert descendy le dreit de mesmes les tenementz[18] a Felice et a Alice com a ij. seors et un heir ; de Alice descendi le dreit de sa

[1] Herin *Vulg.* [2] aunc' *B*, *D*, *Vulg.* [3] sourch' *B* ; suscharge *D.* [4] demene *Vulg.* [5] et *B*, *Vulg.* [6] rent etc. il *B.* [7] eschete donqe *Vulg.* [8] par W. de Bereford' *B*, *Vulg.* ; par Bereford *D.* [9] *Vulg.* p. 27. Text from *A* : compared with *B*, *D.* [10] The second note from *B.* [11] ces *A.* [12] estrete *B*, *Vulg.* [13] E. N. *Vulg.* ; Est *B*, *D.* [14] ij. *B*, *Vulg.* [15] ces *A.* [16] ces *A.* [17] *Ins* par my la maine *B*, *D*, *Vulg.* [18] *Om.* de qel . . . tenementz *B*, *Vulg.*

STANTON, J. If in this case another distrains him, cannot the chief lord mediate, because of the surcharge, bring his writ of mesne against the lord immediate?[1]

BEREFORD, J. No, he cannot, for that writ lies only between lord and very tenant; and in this case he is not his very tenant,[2] for by such service, to wit the rent, he shall not have wardship or marriage or escheat. (And so, according to Bereford, the seisin of this dry rent does not bind.)[3]

59. MELDON *v.* BEAULIEU (ABBOT OF).[4]

If *A*, one of two parceners (*A* and *B*), enfeoffs a third person (*C*) of his part of the tenement, and this purchaser (*C*) does fealty to the lord, then the parcenry is extinct, and the lord cannot avow upon the purchaser (*C*) and the other parcener (*B*) jointly for the whole service, even though there has been no physical partition of the tenement and the lord is ready to aver seisin of the whole service by the hands of *C* and *B* as by the hand of a single tenant.

Michael of Meldon complains that the Abbot of Beaulieu le Roy wrongfully took his beasts, namely etc., in the highway of our lord the King, in such a place etc.

[*Westcote*], for the Abbot, avowed the taking in Langley in a certain place called Langford, and not in the highway of our lord the King. And he avowed for the reason that one Robert Aleyn sometime held the tenements where the taking was made, together with other tenements in the same vill, of one William, sometime Abbot of Beaulieu, predecessor of this Abbot, by homage and fealty and the service of ten shillings a year, and by the service of finding a cart to carry the corn in August for four days at his [Robert's] cost, and by two ploughings in the year at the will of the Abbot, at such time as he [Robert] should be warned [to do them]; and of these services the said Abbot William, his predecessor, was seised [by the hand of] the said Robert as [by the hand of his very tenant]; and from Robert the right of the said tenements descended to Felice and Alice as to two sisters and one heir; and from Alice the right of her share

[1] The chief lord mediate is our *A*, who has purchased from *C*. The chief lord immediate is our *B*. Stanton's question seems to involve the action of a stranger [*X*], who distrains *A*. Can *A* by writ of mesne obtain from *B* indemnity against *X*'s claim?

[2] *A* is not *B*'s tenant, though *B* has a right to a rent from *A*.

[3] So as to make the recipient answerable in an action of mesne. Both Littleton and Coke (Co. Lit. 153 a) call the rent in this case a rent seck, though it can be distrained for.

[4] This case is Fitz., *Avowre*, 184.

pourpartie a Johan Alain com a filz et heir ; et Felice de sa purpartie enfeffa mesme cesti Michel a ly et a ses [1] heirs a tenir du chief seignurage du fee par les services qe au tenementz append[ent] [2] etc. ; le quel Michel se atourna al avauntdit William, predecessour cesti Abbé ; et des queux services mesme cesti [3] Abbé, predecessour etc., fust seisi en comune par my les meyns mesme cesti Michel et Johan ; et pur les services, cariage, arrure, qe arere lui sount per ix. aunz passé avaunt la prise fait, si avowe l'Abbé sur Michel et Johan com etc. et en soun fee.

Herle. Nous fesoms protestacioun a la court qe nous ne conissoms rien a tenir del Abbé, et demaundoms jugement de la fourme de cest avowrie, q'est en sei contrariaunt ; qe a premer chief en avowaunt si dit il Michel estre feffé de la purpartie Felice a tenir du chief seignourage etc., et issint la parcenerie de [4] la tenaunce primes tenue [5] en comune severé. Et pus avowe il sur les ij. en comune auxi com il fussent parceners. Et issint la fine del avowement [6] contrariaunt al commencement etc.

Scrop. Nous avoms avowé solom le fait, et aultre avowrie ne poums avoir en le [7] cas. Jugement etc.

Howard. Qe [8] r[espone]z vous a la contrariouseté [9] qu'il assigne en vostre avowrie ?

Westone.[10] Il n'y ad nul contrariouseté, qe de lour fait demene il nous ount doné cest avowerie, depus qe la pourpartie [11] aliené a Michel et la pourpartie etc. ount toux jours estee tenutz comune [12] sauntz severaunce faire. Et del estat nostre predecessour si fesoms ceste avowerie, qi seisi fut de ceaux services [13] en comune par my les meyns etc. Michel et Johan. Jugement etc.

Berr. Vous avez conu en avowaunt qe Michel purchacea la partie Felice a tenir du chief etc., et *per consequens* [14] la parceneré estraungé. A cel partie descombré [15] des services fors de la porcioun vous n'avendrez mye.

Scrop. L'avowrie lie sur ij. choces, scilicet, en le dreit et en la possessioun ; le dreit q'est la tenaunce, et la possessioun q'est la seisine des services. Dount del houre qe la possessioun, q'est la seisine de [16] services en comune, se acorde a la tenaunce en comune, q'est en le dreit, il semble qe l'avowrie est assez bon en soun cas.

[1] ces *A.* [2] appendent *B.* [3] lavauntdit W. *B, D, Vulg.* [4] et *A, D* ; de *B, Vulg.* [5] tenaunt *A* ; tenu *B, D, Vulg.* [6] avowere *B.* [7] nostre *B, Vulg.* [8] Quei *B, D.* [9] contrariaunce *B, Vulg.* [10] West *B, D.* [11] *Ins.* est *B, D, Vulg.* [12] come *B, Vulg.* [13] ten' *B, Vulg.* [14] et per qaunt *Vulg.* [15] destourbee *B, Vulg.* ; desturbee, *but after alteration, D.* [16] *Om.* services dount . . seisine de *Vulg.*

descended to John Aleyn as son and heir; and Felice enfeoffed of her share this same Michael to him and his heirs to hold of the chief lord of the fee by the services which belonged to the tenements etc.; and Michael attorned himself to the said William, predecessor of the present Abbot; and of these services the said Abbot and predecessor was seised in common by the hands of Michael and John. And for the services, carrying and ploughing, which are in arrear for nine years past before the taking, the Abbot avows upon Michael and John as etc. and in his fee.

Herle. We make protestation to the Court that we do not confess holding anything of the Abbot, and we pray judgment on the form of this avowry; for it is contrariant in itself; for at the outset in avowing he says that Michael is enfeoffed of the share of Felice to hold of the chief lord etc., and thus the parcenry and the tenancy, which at first was held in common, are severed; and then afterwards he avows upon the two [Michael and John] in common as if they were parceners; and thus the end of his avowry is contrariant to the beginning etc.

Scrope. We have avowed according to the facts, and other avowry can we not have in this case. Judgment etc.

Howard, J. What do you answer to the contrariousness which he points out in your avowry?

Westcote. There is nothing contrary, for by their own act they have given us this avowry, since the share that was alienated to Michael and the [other] share have always been held in common without any severance; and we make this avowry of the estate of our predecessor, who was seised of the services in common by the hands of Michael and John. Judgment etc.

Bereford, J. In avowing you have confessed that Michael purchased the share of Felice to hold of the chief [lord], and consequently the parcenry is estranged, and that share is disencumbered of the services, except the [rateable] portion,[1] and [for more than that] you cannot get [to an avowry].

Scrope. The avowry is laid at two points, namely, on the right and on the possession; on the right, which is the tenancy, and on the possession which is the seisin of the services. Therefore, since the possession, which is the seisin of services [done by them] in common, accords with the tenancy in common, which is the matter of right, the avowry is well enough suited to the facts of the case.

[1] Translation doubtful.

Berr. En taunt com Michel fust feffé de la pourpartie Felice etc. a tenir etc., il par cel feffement se atourna a vous,[1] en taunt si fust la[2] parcenerye estraungé et la tenaunc disyount. Dount ceo qe par ley est une foitz desjoynt ne se poet joyndre saunz novel joynture[3] etc.

Howard ad idem. Si vous faissetz la destresse en la parcel Johan pur l'entier[4] des services, et il dit qe Michel fust feffé de une parcel de mesmes les tenementz a tenir etc., et demaund[ast][5] jugement si sur lui pur l'entier des services etc., ne[6] serroit ceo bon respounse (*quasi diceret sic*) ?

Hertep. Vos r[esouns][7] si liereint bien si Michel après la pourpartie[8] aliené se ust atourné et[9] fait les services qe afferent a sa pourpartie soul a nous et tenu sa pourpartie en severalté et que nous luy ussoms accepté com nostre tenaunt. Mès ore est aultre en ceo cas, qe pus la pourpartie aliené etc. si ount Michel et Johan tenu ceaux tenementz en comune et fet les services en comune, et nous et nos predecessours seisi de lour services en comune. Par quei etc.

Byngham.[10] Par ceo feffement si fut la severaunce des services et la tenauncé faite delié,[11] qe avaunt fut un etc. Par quei etc.

Scrop. Nanyl, qe unqore poet il destreindre en chescune parcele por l'entier etc.

A un aultre jour Michel de M., sauve a luy[12] la excepcioun qu'il dona al avowrie l'Abbé sur luy fait termino S. Hillarii, r[espoundi][13] outre.

Kyngham.[14] Robert Aleyn par qy mayn vous detis[15] estre seisi de ceaux services en avowaunt fust seisi de x. vergés de terre, vij. acres de pree en H. et en P., qe sount deux villes,[16] et[17] dona a Geffrey de Burtone iiij. vergez de terres des avauntditz tenementz, fesauntz l'entier des services pur[18] touz les tenementz a chief seignurage etc. en descharge du remenaunt qe remist en la seisine Robert le feffour ; et[19] un tiel vostre predecessour en acceptaunt ceo feffement resceut l'entier des services dount le tenementz tot[20] primes furent[21] chargé avaunt le feffement, par my la mayn G. de Burtone etc. ; et pus les avauntditz iiij. vergez issint chargetz del entier des

[1] *Ins.* et *B, D, Vulg.* [2] il *B.* [3] eniointure *B, Vulg.* [4] lentrie *Vulg.*; lentier *B, D.* [5] *Semble* demaundoms *A*; dd' *B, D.* [6] *Om.* ne *B, Vulg.* [7] resouns *in full B*; raisons *D.* [8] *Ins.* et *B, Vulg.*; *ins.* se *D.* [9] aliene et attourne eust *B, Vulg.* [10] Hengh' *B, Vulg.*; Kyngham *D.* [11] services fuit a la tenaunce deslie *B, Vulg.* [12] *Om.* sauve a luy *B, D, Vulg.* [13] r[espone]z *B*; responetz *D.* [14] Rigg' *B, Vulg.* [15] vous dites vostre predec' *B, Vulg.* [16] *Ins.* et ceux tenementz tient de vostre predecessour par ceux services etc. le quel Robert hors de sa seisine *B, Vulg. Sim. D.* [17] *Om.* et *B, Vulg.* [18] pur *B, D, Vulg.*; qe *A.* [19] *Om.* et *A.* [20] *Om.* tot *B, Vulg.* [21] fut *A*; fur' *B*; fu *D.*

Bereford, J. Inasmuch as Michael was enfeoffed of the share of Felice etc. to hold etc., and by that feoffment he attorned to you, the parcenry was thereby estranged, and the tenancy was disjoined; and what has once been disjoined by law cannot be joined again without a new joinder, etc.

Howard, J., to the same effect. If you made a distress in John's parcel for the whole of the services, and he said that Michael was enfeoffed of parcel of the same tenements, to hold etc., and he demanded judgment whether [you could avow upon him, John], for the whole of the services, would not that be a good answer? (He implied that it would.)

Hartlepool. Your reasoning would be to the point if Michael, after the alienation of the share, had attorned and done to us the services which related only to his share, and had held his share in severalty, and we had accepted him as our tenant; but it is otherwise in this case, for after the share was alienated Michael and John have held these tenements in common and done the services in common, and we and our predecessors have been seised of the services in common. Wherefore etc.

[*Kyngesham.*] By this feoffment a severance was made of the services, and the tenancy was disjoined. Wherefore etc.

Scrope. Not so; for he can still distrain in every parcel for the whole, etc.

On another day Michael of Meldon, saving the exception which he took to the avowry made on him by the Abbot in Hilary term, answered over.

[*Kyngesham.*] Robert Aleyn, by whose hand you in your avowry say that you were seised, was seised of ten virgates of land and an acre of meadow in H. and in P., which are two vills; and he gave out of the said tenements four virgates of land to Geoffrey of Burton, who was to do the whole of the services for all the tenements to the chief lord, so as to discharge the residue which remained in the hand of Robert the feoffor; and such a one, your predecessor, in accepting the feoffment received the whole of the services (wherewith originally and before the feoffment the tenements were charged) by the hand of Geoffrey of Burton etc. And afterwards the said four virgates, so charged with the whole of the services, were purchased from the said

services purchaça de G. le feffé a ly et a sa eglise a toux jours, dount vous estes huy ceo jour seisi. Jugement, si pur l'entier des services pussez sur Michel et Johan Aleyn avowrie faire.

Westcote. A pleder plus haut estat qe a la seisine nostre predecessour par qi [1] nous fesoms [2] cest avowrie ne avendrez mye. Dount del hore qe nous avoms dit en avowaunt qe nostre predecessour fut seisi del entier des services par my la meyn Robert Aleyn, après qi [3] mort les tenemenz par les queux il fit l'entier des services descendy a Felice etc., et nostre predecessour seisi par my lour mayns de mesmes les services, et de Alice issit Johan Aleyn a qi descendy sa pourpartie, et Felice sa pourpartie aliena a M. a tenir de chief etc., dount [4] nostre predecessour fust seisi par my lour mayns, la quel seisine vous ne dedites mye ne rienz a la seisine r[esponez], jugement. Et prioms retourn.

Kyngham.[5] Le remenaunt des avauntditz tenemenz qe fut deschargé etc. si descendy a Alice et a Felice après la mort Robert le [6] piere. Dount del hore qe vous ne poet dedisere [7] qe vous n'estes [8] seisi del autre remenaunt qe demurra chargé etc., jugement etc.

Hunt. Quei r[espone]z a nostre seisine, la quel nous sumes prest d'averir si vous la voletz dedire ? [9]

Warr. Si le heir Robert fust tenaunt de nostre tenaunce il se pout descharger de ceaux services par le *ne vexes*, nyent countreesteaunt la seisine etc. Mès Michel, pur ceo qu'il est purchaceor, ne se poet mye descharger par cel voy.[10] Par quei il estut a ly estre aidé par ceste voie. Et d'aultrepart, le statut de Marleberge veot qe le tenaunt ne soit destreint par aultre service qe faire ne doit encountre la fourme de soun feffement.

Hingham.[11] Michel est purchaceour, et s'il eit chartre il se poet descharger etc.[12] par ceste [13] ou par bref ordyné sur statut de Marlberge, nient countreesteaunt la seisine etc.

Hunt. Quel feffement qe Robert fit a G. de parcel en descharge du remenaunt, nous voloms averrir qe Robert demurra totteveirs [14] tenaunt nostre predecessour [15] par mesmes les services, et nostre

[1] *Om.* par qi *D.* [2] *Om.* par . . . fesoms *A.* [3] et apres sa *B.* [4] *Om.* nostre predecessour . . . dount *B*, *Vulg.* [5] Knight' *Vulg.*; Kingh' *B*; Kyngh *D.* [6] lour *B*, *D*, *Vulg.* [7] dire *B*, *D*, *Vulg.* [8] n'est *A*; estes *B*, *D.* [9] delaier *B*, *D*, *Vulg.* [10] *Ins.* scil. par le vexes *B interlined.* [11] Byngh. *B*; Bynghaм *D.* [12] *Om.* etc. *B*, *D.* [13] *Ins.* etc. *B.* [14] tout voirs *B*, *Vulg.*; tot' voies *D.* [15] *Ins.* et *B*, *D.*

Geoffrey the feoffee by your said predecessor to him and his church for ever, and thereof you are seised at the present time. Judgment, whether for the whole of the services you can make avowry upon Michael and John Aleyn.

Westcote. You cannot get to plead an estate higher than the seisin of our predecessor, upon which this avowry is founded. Therefore we pray judgment, since we have said in our avowry that our predecessor was seised of the whole of the services by the hand of Robert Aleyn, and that after his death the tenements for which he did the whole of the services descended to Felice [and Alice], and that our predecessor was seised of the same services by their hands, and that from Alice issued John Aleyn, to whom her share descended, and that Felice alienated her share to Michael to hold of the chief [lord of the fee], and that our predecessor was seised by their [Michael's and John's] hands; and since you do not deny this seisin, we demand judgment and pray a return [of the beasts].

[*Kyngesham.*] The residue so discharged as aforesaid of the said tenements descended to Alice and Felice after the death of Robert their father. Therefore, since you cannot deny that you are seised of the other part of the tenements [namely the part] that remained charged etc., we demand judgment etc.

Hunt. What do you answer to our seisin, which we are ready to aver if you will deny it?

Warwick. If the heir of Robert were tenant of our tenancy, he would be able to discharge himself of these services by the *ne iniuste vexes*, notwithstanding the seisin [that you allege]. But Michael, being a purchaser, cannot discharge himself in that way. Therefore it behoves that he should be aided in this way. Moreover, the Statute of Marlborough[1] wills that the tenant be not distrained, against the form of his feoffment, for services other than those that he ought to do.

Hengham, C. J.[2] Michael is a purchaser, and if he has a charter he can discharge himself by that [writ] or by a writ formed upon the Statute of Marlborough, notwithstanding the seisin etc.

Hunt. Whatever be the truth about a feoffment made by Robert to Geoffrey of parcel of the tenements in discharge of the residue, we will aver that Robert always remained tenant of our predecessor by the same service and that our predecessor was seised.

[1] Stat. Marlb. c. 9.

[2] There is some difficulty in distinguishing between Hengham, C. J., and an advocate who has a somewhat similar name.

predecessour seisi, prest etc. *ut supra*; le quel averrement il resfuse.[1] Jugement etc.

Howard. Estes vous seisi de la parcel dount R[obert][2] enfeffa Geffrey ?

Hunt. Nous ne pledoms nient par la, enz sur le dreit de nos services.

Howard. Voletz vous avoir l'entier des services et jalemeyns parcel des tenementz dount les services issent (*quasi diceret non*) ?

Hengham.[3] Receust[4] vostre predecessour l'entier des services par my la mayn Geffrey le feffé de parcelle[5] etc. en descharge du remenaunt, et pus mesme la parcel purchacea en demene dount vous est seisi a soun dit ? Est il issint ou noun ?

Hunt. Il ne tient nient de nostre predecessour, prest etc.

Warr. De ceo ne siwt nient unqore qe Robert ne enfeffa Geffrey de la parcel etc. a tenir etc., fesaunt l'entier des services en descharge de ceo qe remist en sa seisine, de la quel vous estes ore seisi. Jugement, si pur l' entier etc. *ut supra.*

West. Nostre predecessour ne receust unqes l'entier des services par my la mayn Geffrey, prest etc.

Warr. R[espone]z primes si vous estes seisi de la parcel ou noun.

Hunt. A ceo qe vous nous avetz doné nos avoms respoundu.

Et postea adiornantur[6] ad terminum Michaelis salvis utrisque[7] partibus racionibus suis.[8]

A quel jour *Herle* : Il ount conu qe ceaux tenemenz furent en la mayn R. Alayn, et pus descenderent a Felice et a Alice, par qi mayn l'Abbé fut seisi etc. ; et nous vous dioms qe Felice de sa pourpartie enfeffa cesti Michel, et pur la parcel dount Michel fust feffé fit sa fealté a cesti Abbé. Et demaundoms jugement del houre qe l'Abbé ad resceu cesti Michel[9] com tenaunt de sa parcel et Michel est tot estraunge du saunk, s'il en rejoynaunt[10] Michel pussent sur eux deux en comune com sur un soul[11] tenaunt avowrie faire.

Scrop. Nous avoms dit qe nos predecessours furent seisiz par my

[1] refusa *B*. [2] P. *A*. [3] Hingh. *B* ; Hyngham *D*. [4] resteint *Vulg*. [5] par celuy *A* ; parcelle *B*, *D*. [6] adiornentur *A*, *D*, [7] utriusque *B* ; utrisque *D*. [8] *Om*. suis *A*. [9] *Om*. Michel *B*. [10] regaignaunt *B*, *Vulg*. ; *doubtful A*, *D*. [11] soun *B*, *Vulg*.

[We are] ready [to aver this] as above; but they refuse the averment; so judgment etc.

Howard, J. Are you seised of the parcel whereof Robert enfeoffed Geoffrey?

Hunt. We are not pleading in that direction, but are pleading upon the right in our service.

Howard, J. Shall you have the whole of the services and none the less a part of the tenements whence the services issue? (He meant that this could not be.)

Hengham, C. J. Did your predecessor receive the whole of the services by the hand of Geoffrey, the feoffee of a parcel, in discharge of the residue [of the tenements], and then did he purchase the same parcel in demesne, of which parcel you are still seised according to him? Is it so or not?

Hunt. He [Geoffrey] held nothing of our predecessor. Ready etc.

Warwick. From that it does not follow that Robert did not enfeoff Geoffrey of a parcel etc. to hold etc., for which parcel he was to do the whole of the services in discharge of the residue of the tenements which remained in his [Robert's] seisin, of which parcel [conveyed to Geoffrey] you are now seised. Judgment, whether for the whole [rent you can distrain] as above.

Westcote. Our predecessor never received the whole of the services by the hand of Geoffrey. Ready etc.

Warwick. First answer whether or not you are seised of that parcel.

Hunt. All that you gave us [to answer] we have answered.

The case was afterwards adjourned to Michaelmas term, with a saving to both parties of the reasons alleged by them. At that day:—

Herle. They have admitted that these tenements were in the hand of Robert Aleyn and afterwards descended to Felice and Alice, by whose hands the Abbot was seised etc., and we tell you that Felice enfeoffed this Michael of her share, and Michael, for the parcel whereof he was enfeoffed, did his fealty to this Abbot. And since the Abbot has received Michael as tenant of this share, and Michael is altogether a stranger in blood [to the parceners], we demand judgment whether you, by re-joining [the severed tenancy], can make a good avowry upon these two [Michael and John] as upon a sole tenant.

Scrope. We have said that our predecessors were seised by the

la mayn Robert et nous mesme seisi par my la mayn Felice et Alice et pus joyntement par my la mayn Johan et Michel, et de cel possessioun en [1] joyntement avoms avowé sur Johan et Michel com joynttenauntz. Jugement etc.

Berr. Quant Felice et Alice tinderent del Abbé en parcenerie, eaux deux furent com un corps et un tenaunt. Et qaunt Felice enfeffa Michel donqe par cel alienacioun [2] fust la parcenerie esteynt. Par quei en avowaunt ne poetz rejoyndre Michel et Johan ne faire [3] de eaux deux un tenaunt, depus qe vous avez resceu Michel com tenaunt etc. en resceyvaunt sa feaulté etc. Par quei agarde la court qe Michel eit ses [4] averes quites et vous en la mercie.

60. SOMERY (EXECUTORS OF) *v.* BUSTER.[5]

Assise de novel diseisine, ou piert qe executours recoverent par assise de tenemenz liverez a eux par le *elegit*, la ou le vicounte livera la seisine nuement, sauncz ceo q'il pristerent nulle esplez.

Johan de B. et Robert de G. executours du testament Michel Somery [6] porterent un assise de novel diseisine vers un Johan Buster,[7] et disoint q'il lour avoit disseisi de lour frauncténement en C. etc. Johan Buster etc. qe nul tort ne nul diseisine n'avoit fait, qar il dit qu'il ne furent seisiz si q'il poent [8] estre disseisiz, prest etc. Et les altres le revers.

L'assise dit qe mesme celuy Johan Buster [9] en ascun temps fut tenu a l'avauntdit Michel, qi executours il sount, en xx. livres d'argent; et, purceo qe après la mort Michel [10] la dette fust arere et despayé, si vynderent les avauntditz Johan et Robert executurs du testament Michel et recovererent mesme la dette devaunt Sir Roggier Brabazon et Sir Gilbert de Rouberi en Everwik par un bref de dette, issint qu'il siwerent bref d'avoir toutz les bones [11] et la moyté des terres Johan tauncqe la dette fust pleynement payé et [12] levé etc. Par vertu du quel bref porté au viscounte par atourné les executours, le viscounte et l'atourné s'en alerent tauncqe qu'il [13] vinderent au manier Johan Buster; [14] et qaunt il vinderent la [15] un poy hors du clos del manier, le viscounte dit al 'tourné 'Jeo vous lyvere seisine de la moyté [16] etc.

[1] *Om.* en *B*, *Vulg.* [2] alien *Vulg.*; alien' *B*. [3] ferount *D*. [4] ces *A*. [5] *Vulg.* p. 29. Text from *A*: compared with *B*, *D*. [6] Sommy *Vulg.* [7] Bust' *B*; Buscer *D*. [8] poieient *B*. [9] Buscer *D*. [10] *Ins.* et *A*. [11] biens *D*. [12] *Om.* paye et *B*, *D*, *Vulg.* [13] tanqil *D*. [14] Buscer *D*. [15] vindrent au manoir *B*, *Vulg.* [16] *Omit from here to the* moyte *in the sheriff's next speech*, *B*, *D*, *Vulg.*

hand of Robert, and we by the hand of Felice and Alice, and afterwards jointly by the hand of John and Michael, and of this joint possession we have avowed upon John and Michael as joint-tenants etc.

Bereford, J. When Felice and Alice held of the Abbot in parcenry, the two of them were as one body and one tenant. Then when Felice enfeoffed Michael the parcenry was extinguished by that alienation. Therefore in an avowry you cannot re-join Michael and John, nor make one tenant of the two, since you have received Michael as a tenant by receiving his fealty. Therefore the Court awards that Michael have his beasts quit and that you be in mercy.

60. SOMERY (EXECUTORS OF) *v.* BUSTER.[1]

In order that an execution creditor may obtain of the debtor's land a sufficient seisin to support an assize, it is sufficient that the sheriff formally deliver seisin on the land, though no esplees be taken and the debtor's family be not expelled.

John of B. and Robert of G., executors of the will of Michael Somery, brought an assize of novel disseisin against one John Buster and said that he had disseised them of their free tenement in C. etc.

John Buster [came and said] that he had done no tort and no disseisin, for he said that [the plaintiffs] were never so seised that they could be disseised. Ready etc.

Issue was joined. The Assize said that at one time this John Buster was bound to the said Michael, whose executors [the plaintiffs] are, in a sum of twenty pounds of money; and because after Michael's death the debt was arrear and unpaid, the said John and Robert, executors of Michael's will, came and recovered the said debt before Sir Roger Brabazon and Sir Gilbert of Roubery at York by a writ of debt, so that they sued to have all the goods and a half of the lands of John until such time as the debt should be fully paid and levied etc. And by virtue of this writ carried to the sheriff by the attorney of the executors, the sheriff and the attorney went and came to the manor of John Buster. And when they came a little outside the close of the manor, the sheriff said to the attorney 'We deliver to you seisin of a moiety etc. in the name of your lords.' And then

[1] This case is Fitz., *Execucion*, 119. The record has not been found. Proper names uncertain.

en noun vos seignourages ; ' et pus il entrerent en le clos le manier et vindrent en la sal ; le vicounte ly livera seisine et dit ' Jeo vous mette en seisine de la moyté de qaunt q'il ad dedenz ceo clos en noun de vos seignourages com jeo fesoi de ceo q'est de hors.' Hoc facto, le viscounte e l'atourné disoynt a la dame q'ele issat. Ele respoundit et dit q'ele ne voleyt mye issir. Hoc dicto, l'atourné et le vicounte chescune ala en sa voy sauntz plus faire.[1] Et prierent eydes[2] des justices. Et les parties furent ajournetz outre a oyer lour jugement.

Hengeham in secreto. La seisine fust trop nue qu'il ne pristerent nul esplez.

Howard. Il ne estut mye qe la seisine[3] soit auxi pleyn en ceo cas qaunt il entrerent[4] par jugement de la court le Roi[5] com en autre cas. Et d'autrepart si un homme recovere tenementz en la court le Roi e en alaunt devers le hostel devie, soun heir avera la mort-dauncestre, pur ceo qe meyntenaunt le fraunctenement par my le jugement veste[6] en sa persone.

Hengeham. Et s'il qaunt il vendra[7] al hostel entrast[8] en les tenementz sauntz avoir l'entré par bref de[9] jugement et par la liveré de vicounte, n'averoit mye le tenaunt soun recoverir[10] par la novel disseisine (*quasi diceret sic*) ?

Postea concordati fuerunt[11] iusticiarii quod querentes[12] fuerunt disseisiti.

Howard. Seu a la fraunchise de Saint Leonard, purceo qe l'assise fut la pledé par resoun de[13] fraunchise etc. Et agardé qe les pleyntifs recoverent lour seisine etc.

61. BLAUNKET *v.* SIMONSON.[14]

Mortdauncestre, ou piert qe si ij. clauses contrariauncz seyent en un fait, homme avera regarde al primer et nient a lez altres.

Johan Blaunket[15] porta assise de mortdauncestre vers Adam le fitz Symon de la mort soun piere, et mist en sa veue et sa demaunde un mies et un bové de terre ove les apurtenaunces in C. Adam respoundu et dit qe ceaux tenemenz furent[16] en la seisine une Alice

[1] disre *B*, *Vulg.* ; dire *D*. [2] eide *B*, *D*. [3] lassise *Vulg.* ; lass' *B*. [4] un homme entre *B*, *D*, *Vulg*. [5] *Om. to the next* Roy, *A*. *Words supplied from B*. [6] se vesti *B*, *Vulg.* ; se veste *D*. [7] vendr' *A* ; vendra *B*, *D*. [8] entra *B*, *D*, *Vulg*. [9] *Om.* bref de *B*, *D*, *Vulg*. [10] tenaunt bon bref *B*, *D*, *Vulg*. [11] sunt *D*. [12] *Om.* querentes *B*, *D*, *Vulg*. [13] par la *B*, *D*, *Vulg*. [14] *Vulg.* p. 29. Text from *A* : compared with *B*, *D*. [15] Blaunchet *B*, *D*. [16] *Ins.* en ascun temps *B*, *Vulg*.

they entered the close of the manor and came into the hall, and the sheriff delivered seisin to [the attorney] and said 'I put you in seisin of a moiety of all that there is within this close in the name of your lords, as I have already done of what is outside.' When this was done the sheriff and the attorney told the lady[1] that she must go out, and she answered and said that she would not go out. When this had been said, the sheriff and the attorney went each his own way without doing more. And the Assize prayed aid of the Justices. And the parties were adjourned over to hear their judgment.

HENGHAM, C. J. (in private). The seisin was too naked, for they took no esplees.

HOWARD, J. There is no need that the seisin should be so full in this case, when they entered by the judgment of the King's Court, as it ought to be in another case. Besides, if one who has recovered judgment dies while he is going home, his heir shall have the mort d'ancestor, for the freehold vests in his person immediately by the judgment.

HENGHAM, C. J. And if when he came home he were to enter into the tenements without having entry under a judicial writ and by livery of the sheriff, would not the tenant have his recovery by the novel disseisin? (He meant that this would be so.)

Afterwards the Justices agreed that the plaintiffs were disseised.

HOWARD, J. Sue in the franchise of St. Leonard, for the assize was pleaded there, by reason of the franchise etc.[2] (And it was awarded that the plaintiffs should recover their seisin, etc.)

61. BLAUNKET *v.* SIMONSON.[3]

Of two repugnant clauses in a deed the former should prevail. This rule is applied where in the premises of a deed the gift is said to be in frankmarriage, but the habendum is in fee simple.

John Blanket brought an assize of mort d'ancestor against Adam, son of Simon, on the death of his [John's] father, and put into his view and his demand a messuage and a bovate of land with the appurtenances in C. Adam answered and said that these tenements were in the seisin of one Alice, mother of this John who is now

[1] Probably John's wife.

[2] The Hospital of St. Leonard at York enjoyed the unusual franchise of having pleas which concerned its tenements pleaded within its gates: Widdrington, Analecta Eboracensia, ed. Caine, p. 233.

[3] This case is Fitz., *Feffementes et Faits*, 94. The record has not been found. Proper names uncertain.

meire mesme cesti Johan q'ore demaunde ;[1] la quel enfeffa un Hughe, qi estat nous avoms, de mesmes ceaux tenemenz par cest fait, et obliga ly et ses[2] heirs a la garrauntie, par quel fait encountre un estraunge vous serretz lié a la garrauntie. Jugement etc.

Hampton.[3] Johan porte cest assise de la mort Adam soun piere, a qi Alice est tot estraunge etc., et[4] vous dit[5] qe Adam de B. de qi mort etc., ne morust par seisi en soun demene com de fee. Et pria l'assise.

L'assise[6] vint et dit q'un Richard de T. dona ceo mies et cele bové de terre etc. en E. ovesqe Alice sa file[7] a Adam de Bedal[8] par une chartre. Et la chartre fust mis avaunt e fust tiel :—' Sciant presentes et futuri quod ego Ricardus de Tyndal dedi, concessi etc.[9] A. de B. unum mesuagium et unam bovatam terre etc. cum Alicia filia mea in liberum maritagium etc., habendum et tenendum predicto Ade et heredibus suis etc.[10] faciendo inde forinsecum servicium etc. Et ego predictus Ricardus et heredes mei predicto Ade et heredibus suis etc. warrantizabimus etc.' Et prierent eyde des justices etc.

Et postea Sire Piers de Maloré ala a Sir Rauf de Hengham et ses[11] aultres[12] conpaignouns d'estre avisé pur la nounpourswauncie[13] qe fut en les ij. clauses compris dedenz la chartre ; qe la primer suppose fraunemariage et la clause subsequent[14] fee simple. Et les unes[15] furent en doute a quel de deux homme[16] dut avoir regarde.[17] Mès a darrein accorderent, et fut le jugement tiel :— Purceo qe trové est par cest assise qe Richard de Tyndal dona mesmes les tenementz qe[18] sount en demaunde a Adam de[19] Bedel ovesqe Alice sa fille en fraunkmariage, coment[20] qe ceo soit en dreit de[21] les[22] clauses subsequens en la chartre,[23] la volunté le donour[24] deit estre savié.[25] Et d'aultrepart, la ou deux[26] clauses sount compris[27] dedenz un fait qe sount de divers natures[28] repugnaunz, homme deit plus tost avoir regarde a la primere continue etc. qe as altres subcequens, si agarde la court qe Johan ne preigne rien par soun bref, mès soit en la mercie, et l'autre partie[29] a Deux sauntz jour, et s'il bie rien recoverir se purchace[30] bref de forme de doun etc.

[1] Alice sa mere *B, Vulg.* [2] ces *A.* [3] Stantone *B, D, Vulg.* [4] a *A.* [5] estraunge et dit *B, Vulg.*; estraunge etc. Adam dit *D.* [6] Adam *A, D*; Lass' *B*; Lassise *Vulg.* [7] *Ins.* et *B, Vulg.* [8] le Bedel *B, Vulg.* [9] *Ins.* a *A.* [10] *Om.* etc. *B.* [11] ces *A.* [12] *Om.* aultres *B, Vulg.* [13] suwauntie *B, Vulg. Sim. D.* [14] sub se subsequente *B, Vulg.* [15] uns *B, Vulg.* [16] hommes *A.* [17] agarde *A.* [18] qore *B, Vulg.* [19] le *B, Vulg.* [20] covient *Vulg.*; covent *B.* [21] et *Vulg.*; de *B.* [22] *Ins.* deux *B, Vulg.* [23] *From* coment *to* chartre *expuncted in B.* [24] *Ins.* en tiel cas *B, D.* [25] sauve *B, Vulg.*; salve *D.* [26] deux *B, Vulg.*; iij. *A.* [27] temps *A*; compris *B.* [28] *Ins.* et *B, Vulg.*; ou *D.* [29] *Om.* partie *B.* [30] *Ins.* par *D.*

demanding, and that she enfeoffed one Hugh, whose estate we have in the same tenements, by this deed, and she bound herself and her heirs to warranty; and by that deed you would be bound to warrant us against a stranger. Judgment etc.

Hampton. John brings this assize on the death of Adam his father, to whom Alice is a total stranger etc. And he tells you that Adam of Bedale, on whose death [he brings this assize], died seised in his demesne as of fee.

The Assize came and said that one Richard of T[yndale] gave this messuage and this bovate of land etc. in C. with Alice his daughter to Adam of Bedale by a charter. And the charter was produced and ran thus :—'Know all present and to come that I, Richard of Tyndale, have given, granted etc. to Adam of Bedale one messuage and one bovate of land etc. with Alice my daughter in frankmarriage etc. to have and to hold to the said Adam and his heirs etc., doing thence the forinsec service etc., and I, the said Richard, and my heirs will warrant to the said Adam and his heirs etc.' And [the jurors] prayed aid of the Justices.

And afterwards Sir Peter of Malorie went to Sir Ralph of Hengham and his other companions to be advised as to the 'non-pursuancy' that there was in the two clauses comprised in the charter, for the first supposes frankmarriage, and the subsequent supposes fee simple. And there were who doubted to which of the clauses regard should be had. But in the end they agreed, and the judgment was as follows :—'For that it is found by the assize that Richard of Tyndale gave the said tenements which are in demand to Adam of Bedale with Alice his daughter in frankmarriage, and, whatever the subsequent clauses in the charter may mean, the will of the donor ought to be saved; and moreover when two clauses are found in one deed and they are of divers natures and repugnant, regard should be had rather to the first that stands in the deed than to those that are subsequent: therefore the Court awards that John take nothing by his writ but be in mercy, and that the other party take farewell without day, and if he [John] desire to recover anything let him purchase a writ of formedon.'[1]

[1] John seems to be the heir in frankmarriage under the charter. The decision seems to be that he has mistaken his remedy. He has brought a mort d'ancestor on his father's death. But his father was not seised in fee simple. Therefore let him try a formedon.

62. ANON.[1]

Replegiari porté par le baroun et sa femme et lez parceners la femme, et agardé bone, pur ceo qe ceo q'il clamerent fut le dreit la femme. Ou l'aultre avowa pur damage fesaunt en son several, l'aultre dit sa comune eu et usé de temps etc.; et chalaungé.

Un homme et sa femme ensemblement ove les[2] parceners la femme porterent lour *replegiari* vers A. et B.

Herle. Les chataux sount a baroun et noun pas a la femme, et vous les avez joyntement[3] en un bref. Jugement du bref.

Hengham. Poet estre qe les tenemenz sount del dreit la femme ou la prise fust fait. Pur quei etc.

Herle. Mesque issi fust, si est le bref viciouse, qe si l'avowrie eust esté fait real par certeyn service sourdaunt des tenementz qe sount del dreit la femme, le baroun averoit[4] eide de la femme, et *per consequens*[5] le bref serroit de forme sauntz nomer la femme. *Ergo* viciouse si ele soit nomé.

Friss. Si le bref soit porté vers ij. com vers ij. jointenauntz, et 'un soit tenaunt del entier, le bref est bon, qe pur le trop le bref ne se abatera. Auxint en ceo cas; mesqe les chateaux soient au baroun et la femme nomé, le bref est assez bon.

Herle. Non est simile, q'en tieul cas si est le plee real et noun pas personel. Et d'aultrepart, chescun plee de prise[6] d'avers si est personel devaunt l'avowrie; et *per consequens* chescun accioun est several, nomement la ou la propreté apent a un nomé[7] etc. Et vous supposez l'accioun estre en comune ou la propreté est un etc. Jugement etc.

Malm. Mesqe les avers fussent a ij. seors et la une fust covert de baroun, la propreté serroit a baroun et noun pas a sa femme; et vous supposez la propreté estre a la femme, issint qe le bref suppose un faux.

Berr. Si le baroun et sa femme porterunt lour bref de trespas joyntement et se pleygnassent[8] lour chateaux a tort estre prise[9] le bref serroit viciouse.

[1] *Vulg.* p. 30. Text from *A*: compared with *B*, *D*. [2] *Ins.* autres *B Vulg.* [3] *Ins.* lietz *B*, *Vulg.*; liez *D*. [4] avoyt *A*. [5] qaunt *Vulg.* [6] chescun par lei des pris *D*. [7] home *B*, *Vulg.*; nome *D*. [8] *Ins.* de *B*. [9] atort prises *B*, *D*.

62. ANON.[1]

Husband and wife claim common in right of the wife. A writ of replevin brought by them is upheld against the objection that the wife, having no property in the beasts that were taken in distress, ought not to have been joined as plaintiff. *Qu.* whether common in gross can be claimed by prescription.

A man and his wife together with the parceners of the wife brought their replevin against A. and B. etc.

Herle. The chattels belong to the husband, not to the wife, and you have joined them in one writ. Judgment of the writ.

Hengham, C. J. It may be that the tenements where the taking was made are of the right of the wife. Therefore etc.

Herle. Even though that be so, the writ is vicious; for, if an avowry had been made for certain services arising from the tenements which are of the right of the wife, the husband would have had aid of his wife; and so the writ would be correct in form if the wife were not named, and therefore it is vicious if she be named.

Friskeney. If the writ be brought against two as against joint tenants and one of them be tenant of the whole, the writ is good, for the writ shall not be abated for having too much in it. So in this case; although the chattels be the husband's and the wife be named, the writ is good enough.

Herle. The case [that you put] is not similar, for there the writ is real and not personal, and on the other hand every plea for a taking of beasts is personal until an avowry is made; and consequently every action [of that sort] is several, in particular where the property belongs to a certain person who is named etc.; and you suppose that the action is in common where the property is one etc. Judgment etc.

Malberthorpe. Although the beasts belonged to two sisters and one of them was covert, the property would belong to the husband and not to the wife. And you suppose the property to be in the wife, so that your writ supposes a falsehood.

Bereford, J. If the husband and wife brought their writ of trespass jointly and complained that 'their' chattels were wrongfully taken, the writ would be vicious.

[1] This case is Fitz., *Replevin*, 42.

Hengham. Est le soil ou les avers furent prises de dreit la femme ou noun ?

Ass. La femme ove ses [1] parceneres ount franchise de comoner en mesme le leue, ne [2] nous reinz ne clamoms en mesme la comune si noun del dreit nostre femme.

Et fust le bref agardé bon par *Hengham*, purceo qe le lieu [3] etc. si estoit del dreit la femme.

Herle avowe la prise etc., et pur la resoun qe le lieu ou la prise fut [4] fait si est soun several com du dreit Johanne [5] etc., et issint les prist il com en damage fesaunt, com bien ly lust.

Ass. Nous et les auncestres les [6] parceners nostre femme avoms eu [7] cel fraunchise de comoner en mesme le lieu de jour de Bon Vendredy desqes a les utaves de la Trinité, et ceo avoms eu et eusé du temps dount il n'y [8] ad memorie.

Herle. Voletz ceo pur respouns ? (Et fut avowé.)

Herle. Vous avetz conu le soil [9] le nostre, et ceo qe vous clamez si est un profit en aultri soil ; et vous ne clamez nul comune en tiel seson del an com appendaunt a vostre fraunctenement ne vous ne moustrez especialté, par quei vous pussez cel profit user. Dount demaundoms jugement coment nous devoms departir.

Ass. Eu [10] et usé, prist.

Herle. Vous ne resorterez mye, qe vous l'avetz clamé com profit en aultri soyl et vous ne [11] moustrez especialté etc.

Will. Le soyl n'est mye appendaunt a eaux qe [12] nul ne seit soun several desqes au temps de faucher.

Herle. Nous vous dyoms en avowaunt [13] qe le soil fut nostre several etc. Et sur ceo isserent d'enparler en clamaunt com profit en aultri soil et sur ceo avowé en supposaunt le soil estre a nous. Jugement, si vous pussetz resortir etc.[14]

[1] ces *A.* [2] ou *B*, *Vulg.* ; ne *D.* [3] *Om. until* lieu *in Herle's speech*, *B*, *Vulg.* *Ins.* ou la prise fut faite *D.* [4] *Om.* fut *A.* [5] *Ins.* sa femme *B*, *D*, *Vulg.* [6] nos *B*, *Vulg.* [7] en *Vulg.* [8] luy *A.* [9] *Ins.* estre *B*, *D.* [10] en *Vulg.* [11] *Om.* ne *B*, *D*, *Vulg.* [12] ne *B* ; qe *D.* [13] deimus avaunt *B.* [14] *Add* Hengh' etc. *B.* *Not in D.*

HENGHAM, C. J. Is the soil where the beasts were taken of the wife's right, yes or no?

Assheby. The wife with her parceners have a franchise of commoning in the said place, and we claim nothing in the said common except in right of our wife.

And the writ was awarded good by HENGHAM, for that the place etc. was of the right of the wife.

Herle avowed the taking etc., and for the reason that the place where the taking was made was [the avowant's] several in right of Joan [his wife] etc., and so [said Herle] he took them damage feasant, as well he might.

Assheby. We and the ancestors of the parceners of our wife have had this franchise of commoning in the said place from Good Friday until the octave of Trinity [in every year], and this we have had and used from time whereof there is no memory.

Herle. Do you wish that to be your answer? (And [the plaintiff's counsel] were avowed.)

Herle. You have confessed that the soil is ours, and what you claim is a profit *in alieno solo*, and you do not claim common at a certain time of year as appendant to your freehold, and you do not show any specialty by which you can use this profit. Therefore we demand judgment as to how we should depart [out of this Court].

Assheby. Had and used. Ready etc.

Herle. You shall not jump back to that, for you have claimed it as a profit *in alieno solo* and you show no specialty, etc.

Willoughby. The soil does not belong to them, for no one knows his several until the time for mowing.

Herle. In avowing we told you that the soil was our several etc., and upon that they went out to imparl, and they came back and claimed this as a profit in another's soil; and, having done so, were avowed [by their clients], and thus they admit that the soil belongs to us. Judgment whether you can jump back etc.

63. ANON.[1]

Ou piert qe heir colateral purra mye clamer vers cely en la lyne, pur ceo qe rien ne put resortir si noun en defaute cely en la lyne.

Assise de mort d'auncestre ou dereyn seisine fuist allegé et puis clamer ;[2] et n'osa demorer sur ceo, et fist defaute, et l'assise pris par sa defaute.

Hugh le fitz Henri porta le[3] mort d'auncestre vers un Thomas et Adam de certeinz tenementz de la seisine un H. etc.

Ing. aleggea[4] derein seisine de un C.

Pass. La seisine ne nous[5] deit grever, qar il fut nostre tollour, qe sa felonye[6] ne sa quiteclame ne nous barreit etc.

Ille.[7] Excepcioun de derein seisine[8] tendra force[9] ou le demaundaunt poet avoir actioun de sa seisine. Mès ore fust il nostre tollour. Par quei etc.

Seltone.[10] Vostre respouns n'est pas general,[11] qe si le puisné fitz fut entré les tenementz dount soun piere morust seisi, et l'issue le eyné friere ust porté soun bref d'ael vers le tenaunt a qui le pusné friere eust aliené, et[12] il respount[13] et dit qe l'auncestre de qi mort il porte soun bref avoit un fitz Adam par noun et mulieré qe après sa mort entra et fut seisi et aliena, et ceo est un bref de possessioun[14] etc., le bref se abatereit, nepurqaunt le demaundaunt n'averoit bref de possessioun de la seisine le puisné friere. Estre ceo, si C., de qi nous pernoms nostre excepcioun, fust ore seisi, il vous chacereit a vostre bref de dreit.

Tilton. Aultre est ou il n'est pas seisi. Estre ceo, le play bastard[15] vous salve ou fust aleggé excepcioun de derein seisi ou fust dit qu'il fut tollour, par quei etc., par quei il fut ousté de la excepcioun

[1] *Vulg.* p. 30. Text from *A* : compared with *B*, *D*. Second headnote from *B*. [2] desclamer *B*. [3] lassise de *D*. [4] alegge *A*. [5] vous *B*, *Vulg.* ; nous *D*. [6] felon *Vulg.* [7] Ill' *B*, *D*. [8] *Ins.* ne *B*, *D*. [9] forsque *B* ; fors *D*. [10] Steltone *B* ; Scelton *D*. [11] response est trop general *B*. [12] ou *D*. [13] respoundi *D*. [14] *Om. to next* possessioun *Vulg.* *The words stand in B.* [15] bastarde *B*, *D.* ; bastardie *Vulg.*

63. ANON.

In a mort d'ancestor the defendant makes an unsuccessful attempt to maintain the exception that a third person was 'last seised.' He then vouches that person, who unsuccessfully attempts to abate the assize by a 'claim' that he is of one blood with the plaintiff. Discussion of the cases in which a plea of 'last seisin' and a 'claim' are admissible.

Hugh, son of Henry, brought the mort d'ancestor against Thomas and Adam for certain tenements upon the seisin of one H. etc.

Ingham alleged 'last seisin' in one C.

Passeley. His seisin ought not to hurt us, for he was our 'toller' in such wise that his felony or his quitclaim would be no bar to us etc.; and the plea of 'last seisin' will only hold good where the demandant might have an action on the seisin [which is thus pleaded]; but here he was our 'toller.' Wherefore etc.[1]

Skelton. Your answer is not [a] general [rule], for if the younger son entered on the tenements whereof his father died seised, and the issue of his elder brother brought his writ of ael against the tenant to whom the younger brother alienated [the tenement], and [that tenant] said that the ancestor of the plaintiff upon whose seisin the writ is brought had a son, Adam by name,[2] who was legitimate and who after [that ancestor's] death entered and was seised and alienated, and that this is a possessory writ etc., the writ would be abated, notwithstanding that the demandant could bring no writ on the seisin of the younger brother. Besides, if C., upon whose seisin we rely in our plea, were now seised, he would drive you to your writ of right.[3]

Tilton. But he is not seised, and that makes the difference. Moreover, the Bastard case saves you,[4] where a plea of 'last seisin' was alleged and it was answered that [the person alleged to have been the last seised] was the plaintiff's 'toller,' and judgment was prayed, and the tenant was ousted from his plea by award [of the

[1] See above, p. 49, note.

[2] The hypothetical younger son.

[3] General principle: The assize of mort d'ancestor is abatable by the assertion that some one [*X*] other than the ancestor named in the writ was 'last seised.' Exception: This is not true if *X* be a 'toller' (interloper). Here plaintiff's counsel attempts to define the interloper as a person on whose seisin the plaintiff could not sue: in other words, any one who is not an ancestor of the plaintiff is a 'toller.'

[4] Apparently there is reference to some well-known decision. See App. II. § 2.

par agarde et pus voucha soun feffour qe vint en court et respoundi,[1] par quei etc.

Et issi fit[2] il en ceo play.

Lit. A cesti bref de possessioun ne deit il estre r[espoundu], qar nous grauntoms bien la seisine soun auncestre etc. et sumes du saunk mesme celuy et clamoms tenir par mesme la descente.

Tilton. Coment du saunk? Et fetes vous privie a nous.

Inge. H., de qi seisine vous demaundez, avoit un friere S. par noun; de S. descendy etc. a Felice com a fille, de F. a Johan com a fitz, de Johan a C. com a fitz.[3] Et issint clamoms etc.

Scot. Clamer ne poetz, qar en clamer ij. choces sont. La premere est q'il conust la seisine soun auncestre. La seconde q'il est soun heir du saunk. Mès ore est issint qe heritage ne poet jammès resortir si ne seit en defaute de heir en la line.[4] Mès ore demaundoms de la seisine nostre piere, qui seisine vous avetz graunté. Et nous voloms averrir qe nous sumes plus prochein heir. Jugement etc.

Ingham. Si nous grauntames la seisine vostre auncestre, de ceo ne siwit qe nous vous avoms graunté estre procheyn[5] etc., qe il poet estre qe vous estes bastard etc. Et dit *ut supra.*

Scot. Privie a nous ne poez estre issi qe vous pusset clamer, qe nul riens ne poet a vous resortir sy noun par my moy, et ceo après ma mort; qe, si vous preisset vostre tittle de la seisine moun piere, il convendreit faire vostre[6] descente taunqe a moy et dire outre 'purceo qu'il morust sauntz heir etc. resorti etc.' Et depus qe nous sumes en pleyn vie,[7] vous ne poetz resortir. Jugement, si a vostre clamer[8] devetz[9] estre r[eceu].

Ing. Jeo vous moustre qe si[10] qe excepcioun de derein seisine est doné a estraunge et clamer a privetz. Mès par excepcioun de derreyn seisine ne me puisse[11] eider, pur ceo qe jeo su[12] pryvé a vous, qar bataille ne graunt assise etc.[13] pur la procheynté du saunc. Par quei le clamer[14] i gist.

Scot. Si vous fussetz r[eceu] a clamer, si porreit le friere au

[1] dd' *B*; respondi *D.* [2] pust *B.* [3] *Om.* a C . . . fitz *A.* [4] heir en la leigne *B.* [5] estre plus prochein heir*B*; estre prochein heir *D.* [6] *Ins.* title de *B, Vulg.* [7] *Ins.* ou *B, D.* [8] desclamer *D.* [9] poietz *B, Vulg.*; poetz *D.* [10] *Om.* qe si *B.* [11] puisse *B, D*; pussez *A.* [12] suy *B, Vulg.* [13] *Ins.* et *A.* [14] desclam' *D.*

Court], and afterwards vouched his feoffor, who came into court and answered.

And this was done in the present case: [*i.e.* the defendant vouched C., who warranted, and pleaded as follows.]

Lit. He ought not to be received to this possessory writ, for we fully admit the seisin of his ancestor and are of the same blood with him and claim by the same descent.

Tilton. How of the [same] blood? Make yourselves privy to us.

Ingham. H., upon whose seisin you demand, had a brother, S. by name, and from S. [the right] descended to Felice as daughter, and from Felice to John as son, and from John to C. as son, and so we claim etc.

Scotre. Claim[1] you cannot, for in order that a 'claim' be good two things are needful: first he must admit that [the common] ancestor was seised, and secondly he must assert that he is [that ancestor's] heir in blood. But the present case is this, that an inheritance can never 'resort' [leap backwards], if it be not for default of heirs in [the direct] line. And here we demand on the seisin of our father, and his seisin you have conceded, and we will aver that we are his next heir. Judgment etc.

Ingham. If we granted the seisin of your ancestor, it does not follow that we have granted that you are his next heir, for it may be that you are bastard. (And he repeated what he had said.)

Scotre. Privy to us you cannot be, for you cannot claim that anything could possibly leap back to you except through me, and then only after my death. For, if you took your title on the seisin of my father, you would have to make your descent down to me and then would have to say that, because I died seised without an heir [of my body, the right] resorted to you. And since we are yet alive, you cannot thus 'resort.' Judgment, whether you shall be received to your claim.

Ingham. I tell you that it is so, for a plea of 'last seisin' is given to a stranger and a 'claim' is given to privies. But by a plea of 'last seisin' I cannot help myself, for I am privy to you, so that battle or grand assize [would not lie between us] because of the nearness of blood. Therefore the 'claim' lies.

Scotre. If you were received to 'claim,' so might a great-grand-

[1] In the mort d'ancestor the term 'claim' is used in a special sense. The tenant admits the seisin of the person named in the writ and 'claims' to be his next heir, or at any rate a sufficiently near heir, for it seems to be settled law that the assize does not lie between certain very close relations—*e.g.* brothers.

besael. Et issint poet homme abater chescun bref de possessioun par mi clamer, qe serroit encountre ley.

Ingham. Vous dites qe clamer ne gist mye, purceo qe rien ne poet resortir etc. Vous dites vostre talent, qar si le pusné friere entre etc., il abatera[1] soun bref de mortdauncestre, nepurqaunt rien ne put descendre al puisné vyvaunt l'eyné.

Scot. Non est simile, purceo qe les ij. frieres sount en un seppe,[2] et en vostre cas nyent, qe de une part sount il cosynes et d'aultrepart en la ligne.[3] Par quei etc.

Ing. Nous avoms vewe[4] le uncle clamer et abatre le mortdauncestre.

Cressing. voleit aler au[5] jugement sur ceo clamer.

C. aparceust[6] qe soun clamer ne fut pas bon et fit defaute. Par quei l'assise fut agardé[7] par sa defaute. Et prierent les seriauntz qu'il deisent lour[8] avys qaunt al clamer.

Cressingham. Celuy qe voet clamer si covent qu'il face sa descente par meme la ligne semblable. Mès ore est issi qe rien ne poet resortir si noun par defaute etc. en[9] la ligne etc.

64. ANON.[10]

Assise de novel diseisine, ou il sey pleint estre disseisi com de rente schargé, et l'altre dit qe ceo fut rente service issaunt de un altre manier, et ceo trové par assise, et ne prist rien par soun bref, pur ceo q'il clama la rente auxi bien en l'un manier cum en l'altre. Novel disseisin de rente serviz issante de un manoir, ou la destresce se fit en un autre manoir qe fut obligé etc., quele hure etc., et fut deneé, et il porta l'assise : ou fut dit pur ceo qu'il bia recoverir la rente en l'un manoir e auxi bien com en l'autre, ou il poet destreindre l'un pur service, q'il ne prist rien.

William etc. enfeffa un Robert de soun manier de C.[11] ove les apurtenaunces rendaunt a ly c. sous par an et a ses[12] heirs et a ses[12] assignz, et pus dona mesme les c. s. a un Roggier de Wappelade et as

[1] abata *A.* [2] ceppe *B, D.* [3] leigne *B.* [4] veu *B, D.* [5] voilletz demourer en *B*; volez aler a *D.* [6] apertent *Vulg.* [7] garde *A.* [8] deissent son *D.* [9] *Ins.* mesme *B, Vulg.* [10] *Vulg.* p. 31. Text from *A* : compared with *B, D.* Second part of headnote from *D.* [11] *Om.* de C. *A, D*; *ins. Vulg.*; *interlined in B and so throughout.* [12] ces *A.*

father's brother [be received to 'claim'], and so every possessory writ might be abated by a 'claim,' and that would be contrary to law.

Ingham. You say that a 'claim' does not lie because nothing can resort etc. You talk at random. If the younger brother enters etc. he shall abate [the elder brother's] writ of mort d'ancestor, and yet nothing can descend to the younger while the elder is alive.

Scotre. That is not a similar case, for the two brothers stand on the same branch, and that is not the case here, for on the one hand the two persons are cousins, and on the other they are in the line.[1] Wherefore etc.

Ingham. We have seen [a plaintiff's] uncle 'claim' and so abate the mort d'ancestor.

Cressingham, J.[2] Will you abide judgment on this 'claim'?

[The warrantor] perceived that his 'claim' was not good, and therefore made default. So the assize was awarded by default. And the serjeants prayed [the Justices] to give their opinion as to the 'claim.'

Cressingham, J. He who wishes to claim must make his descent by the same and the like line; but in this case nothing could resort to [the claimant] except upon a default [of heirs] in the line [of the plaintiff].

64. ANON.[3]

A enfeoffs *M* of the manor of *C* at a rent of a hundred shillings. He then grants the seignory and the rent to *X*, and at the same time binds his manor of *B* to distress if the rent be arrear. Upon the grant of the seignory *M* attorned himself to *X*. The rent being arrear, *X* endeavours to distrain in the manor of *B* for the rent. *A* resists him. *X* brings the novel disseisin against *A* as for a rentcharge on the manor of *B*. *Held* that the action cannot be maintained, as the tenant of the manor of *C* is not a party to it.

William etc. enfeoffed one Robert of his manor of C. with the appurtenances, rendering to him a hundred shillings a year and to his heirs and to his assigns. Afterwards he gave these hundred

[1] The text is obscure. Perhaps it means that the two persons are not equally distant from the common ancestor.

[2] No justice or serjeant of this name living at this date is known to us. Hugh of Cressingham had been slain in Scotland in 1297. It will be noticed also that, with the exception of Scotre and Passeley, the names of counsel are not those which frequently appear in or about 1308.

[3] This case is Fitz., *Assise*, 360.

ses [1] heirs et as ses [1] assignez ove la seigneurie du manier avauntdit. Et estre ceo il obliga soun manier de B., dount il fut mesme seisi,[2] a sa [3] destresse quel houre qe la rente fust arere. Le tenaunt du manier de C. se atourna a Roggier, et Roggier seisi de les c. s. par my la mayn le tenaunt du manier de C. Pus la rente fust arere. Par quei Roggier vint et destreiny en le manier de B.[4] qe fut obligé a sa destresse. Et William soun feffour, qe fust tenaunt du manier de B., ly destourba. Par quei il porta l'assise de novel disseisine devaunt Sir Robert de Rateforde [5] et Sir Henri de [6] Spigournel, et se pleynt estre disseisi de soun fraunctenement, et mist en sa pleynt c. sous de rente [7] issaunt du manier de B.

William vient par baillif, et dit qe assise ne deit estre, qar les c. sous de rente, dount il se pleynt estre disseisi, est rente service issaunt du manier de C., et fut ascun temps en la seisine William, vers qi ceste assise est ore porté ; qe de ceo manier enfeffa etc. a tenir de luy etc. par les services de c. sous par an ; les queux c. s. il dona etc., q'ore se pleint, a resceyvre par my la meyn le tenaunt du manier de C. com rente service, par my qi [8] mayn il seisi fut de sa feaulté et des aultres services ; et a cel rendre il obliga soun manier de B. a sa destresse quel houre etc. ; et purceo qe la rente est [9] rente service issaunt du manier de C. et le tenaunt du manier [10] nient nomé,[11] demaundoms judgement du bref.

Et purceo qe [12] baillif ne pout estre partie a tiel respouns, les justices alerent al assise prendre. L'assise counta [13] tot le fait *ut supra*, et prierent eide des justices.

Warr. pur mover la court. Trové est par verdit d'assise, qe William qe dona ceste rente a Roggier, obliga tot soun manier de B. a la destresse quel houre qe la rente fust arere ; et, depus qe tiel manier est chargé del entier [14] nient [15] de nule parcel ou la vew fust fait,[16] nous n'avoms mestier de joyndre aultre tenaunt [17] du manier de B.[18] avauntdit, qar nous avoms suffisaunt tenaunt et disseisour, *et hoc sufficit.*

Kyng. Trové est par verdit d'assise qe la rente fust doné a resceivre [19] par my la meyn le tenaunt du manier de C. com rente service, ou vous poetz destreindre si vous voderez. Et depus qe le

[1] ces *A.* [2] *Om.* dount . . . seisi *A* ; *interl. B.* [3] la *B*, *Vulg.* [4] *Om.* de B. *A*, *D* ; *ins. Vulg.* ; *interl. B, and so throughout.* [5] Radeford, *B*, *D*, *Vulg.* [6] *Om.* de *B*, *D.* [7] *Om. to after next* rente *B.* [8] quei *A* ; qi *B.* [9] *Ins.* arrere etc. la quele rente si est *B*, *Vulg.* [10] *Om.* du manier *A.* [11] *Ins.* en bref *B.* [12] *Ins.* le *B*, *D*, *Vulg.* [13] conust *B*, *D.* [14] *Ins.* et *D.* [15] *Ins.* vient *D.* [16] entier ou si la rente fuist arere nous poems destreindre par quei, *and om.* nient . . . fait *B*, *but over erasure.* [17] *Ins.* fors le tenant *D.* [18] *Om.* du manier de B. *A* ; *ins. B*, *Vulg.* [19] resceivre *B*, *D* ; recoverye *A*

shillings to one Roger of Whaplode and to his heirs and to his assigns with the seignory of the said manor. Besides this, he bound his manor of B. to his [Roger's] distress in case that rent should be arrear. The tenant of the manor of C. attorned to Roger, and Roger was seised of the hundred shillings by the hand of the tenant of the manor of C. The rent fell arrear, so Roger came and distrained in the manor of B., which had been bound to his distress. William his feoffor, who was the tenant of this manor, disturbed him [in distraining]. So Roger brought an assize of novel disseisin before Sir Robert of Retford and Sir Henry Spigurnel and complained that he was disseised of his freehold and put into his plaint a hundred shillings issuing from the manor of B.

William came by his bailiff and said that an assise there ought not to be, for the hundred shillings of rent whereof he complains that he is disseised are a rent service issuing from the manor of C. And that manor was sometime in the seisin of William, against whom this assise is now brought, and of that manor William enfeoffed [one Robert] to hold of him etc. by the services of a hundred shillings a year. And these hundred shillings [William] gave to [Roger] the now plaintiff, to receive by the hand of his tenant of the manor of C. as rent service. And by the hand of [this tenant, Roger] was seised of his fealty and other services. And [William also] bound his manor of B. to this payment so that [Roger] might distrain there [if the rent should be arrear]. And because this rent is rent service issuing from the manor of C. and the tenant [of that manor] is not named [in the writ], we pray judgment of the writ.

And because a bailiff cannot be a party to such an answer, the Justices went on to take the assize. The assize told all the facts as above and prayed aid of the Justices.

Warwick to move the Court. It is found by verdict of the assize that William, who gave this rent to Roger, obliged all his manor of B. to distress in case the rent should be arrear, and since this manor where the view was made was charged with the whole rent and not with parcel of it, we have no need to join any other tenant; for we have a sufficient tenant and a disseisor, and that is enough.

Kyng[*esham*]. It is found by verdict of the assize that the rent was given to be received by the hand of the tenant of the manor [of C.] as rent service. You could distrain there if you pleased.

manier etc. est de cest rente chargé plus avaunt qe le manier de B., qe ceste rente est issaunt du manier de C. com rente service, par quei si le tenaunt du manier de C. ne soyt pas nomé, vous ne devetz a cesti bref estre r[espoundu].

Warr. Vous deissez bien si les ij. maniers fussent en comune chargez de la rente. Mès ore n'est ceo pas issint; qar, qaunt William nous dona ceste rente, il obliga tot soun manier de B. a la destresse etc. Par quei il semble qe le manier de B. fut chargé del entier de la rente et nyent mye du parcel.[1] Et depuis qe le manier mys en vewe est severalment del[2] entier des services chargé, et nous ne pernoms[3] altre deforcour par la ou nous avoms tenaunt et disseisour, par quei nostre bref est asset bon, et demaundoms jugement.

Hengh. La rente dount vous pleignez est rente service; la quel si ele soit arere vous poetz destreindre en les tenementz qe sount tenuz par ceaux services; les queux sount overtetz[4] a vostre destresse, issi qe vous ne poetz tort ne disseisine en nostre persone assigner, et demaundoms jugement du bref.

Howard. Mesqe il soit rente service en droit du manier de C., ceo est une rente de frauncténenement qaunt al manier de B., et purceo avoms la eleccioun de prendre la une voie ou l'autre.

Kyngham. La rente dount vous portez cest assise si sount mesmes les c. sous issaunt du manier de C. com rente service; et si vous recoverassez vostre demaunde par ceste assise vers William en le manier de B., altre foitz si porretz destreindre en le manier de C. et pur mesmes les services et recoverez[5] par destresse com rente service, et issint recoverez vous une choce ij. foitz, qe serroit duresce et encountre ley.

Spigournel. Jeo vei qe les c. soutz de rente si furent en ascun temps rente service; la quele rente vostre feffour vous dona a resceyvre par my la mayn le tenaunt du manier de C. ove tot la seignurie, dount le tenaunt s'atourna des services. Par quei William vostre feffour et ses[6] heirs sount estraungés de cest seignurye pur toux jours; issint qe, si le tenaunt du manier de C.[7] ferroit felonye, vous com seignour averez l'eschete du manier de C., et donqe les c. sous serrount esteintz. Par quei vous ne poetz mesme les c. sous recoverir d'aultre tenaunt fors etc. Et purceo voloms savoir s'il claime rien

[1] et nemie etc. *B, Vulg.* [2] veuwe severalment est del *D.* [3] *sic A, B, D.* [4] overtes *B, D, Vulg.* [5] recoverir *B, D.* [6] ces *A.* [7] *Om. until after next* manier de C. *Vulg. The words stand in B.*

And whereas the manor of C. is charged with this rent in priority to the manor of B., for this is a rent issuing out of the manor of C. as rent service, we pray judgment whether you ought to be received to this writ as the tenant of the manor of C. is not named in it.

Warwick. You would be saying what is true if both the manors had been charged in common with this rent. But that is not the case here: for when William gave us this rent he bound all his manor of B. to distress. So it appears that the manor of B. was charged with the whole rent and not merely with part of it. And since the manor of B. that is put in view is severally charged with the whole of the services, and we require no other party, since we have a tenant and a disseisor, therefore our writ is good enough and we pray judgment.

Kyngesham.[1] The rent concerning which you complain is a rent service, and if it be arrear you can distrain in the tenements that are holden by those services, and those tenements are open to your distress, so you can assign no tort and no disseisin in our person. We pray judgment of the writ.

Howard, J.[2] Albeit rent service in regard to the manor of C., it is a rent of freehold as regards the manor of B. Therefore we have our choice between taking one way and taking another.

Kyngesham. The rent for which you bring this assize is the hundred shillings issuing from the manor of C. as a rent service; and if you were to recover your demand by this assize against William in the manor of B., on another occasion you might distrain in the manor of C. for the same purposes and would recover by distress as rent service. Thus would you recover one thing twice over, and that would be hardship and against law.

Spigurnel, J. I see that the hundred shillings of rent were at one time rent service, and this rent your feoffor gave you to receive by the hand of the tenant of the manor of C. together with the whole seignory; and the tenant attorned himself for the services. So William and his heirs are estranged from the seignory for ever. So that if the tenant of the manor of C. commits felony, you as lord shall have the escheat of the manor of C. and then the hundred shillings will be extinguished. Therefore you cannot recover the hundred shillings from any other tenant than [from this tenant of the manor of C.] So we desire to know whether you claim anything in

[1] The MSS. ascribe this to Hengham, who is C.J. But these remarks seem to come from counsel.

[2] But this should come from one of the plaintiff's counsel.

en la seignurie du manier de C., qe de cest rente, com de rente service, est chargé.

Et sur ceo isserent d'enparler. Et revynderent et disoynt qe oyl. Dount jour lour fut doné d'oier lour jugement. A quel jour fust agardé, purceo qu'il clama a recoverir auxi bien la rente en le manier de C. com en le manier de B. ou il se pleynt estre disseisi, et le tenaunt du manier de C. ne fust pas nomé etc., par quei fust agardé qu'il ne prist rien par soun bref etc.

65. WINGTON *v.* WINGTON (PARSON OF).[1]

Replegiari, ou il avowa pur rente service a terme de sa vie sour le feffé en fee simple sauncz lier possessioun de la rente, et le pleintif chacé a [2] respoundre a la receyte pur ceo qe altre mist avaunt fait.

Replegiari, ou certein tenemenz furent donés a un homme et a ses heirs a tenir de donour a terme de la vie le feffour et après soun discès de chef seigneur. Et fut chacé a respoundre a l'avowerie etc.

William de Wyngetone porta soun *replegiari* vers Adam persone de Wyngetone et altres etc. et dit qe atort prist etc. prendre firent [3] ces averes etc.

Lauf. avowa la prise etc. et par la resoun qe les tenementz ou la prise fust fait furent en la seisine Adam, qi hors de sa seisine enfeffa l'avauntdit William [4] etc. a tenir de luy mesme a terme de la vie Adam, rendaunt [5] de ceo par an viij. marks et fesaunt pur luy et pur ses [6] heirs [7] les services dues des tenementz, et après soun decès a tenir du chef seignurage du fee par les services qi au tenementz apendent a toux jours; et, purceo qe les viij. marks de rente etc., si avowe [8] etc. Et bota [9] avaunt fait qe testmoigne ceo q'il avoit dit en s'avowrie etc.

Hedon demaunda jugement del avowrie, qe celi qe voet avower pur rente arere si covent il qu'il avowe d'aschun seisine et ceo n'ad il my fait. Jugement etc.

Berr. Il mette avaunt vostre escrit qe testmoigne qe vous resceustes les tenementz a tenir de luy [10] tot sa vie pur viij. marks. Dount si vous ne ly eietz la rente paié vous luy avetz greignour [11] tort fait.

[1] *Vulg.* p. 32. Text from *A*: compared with *B*, *D*. Second headnote from *B*. [2] *Om.* a *A*. [3] prendre ferent *A*; prendre firent *B*, *D*, *but expuncted in B*. [4] *Ins.* a luy et a ses heirs *Vulg.*, *interl. B*. [5] *In B* rendaunt *precedes* a terme. [6] ces *A*. [7] *Ins.* al chief seigneur' *Vulg.*, *interl. B*. [8] avowa *D*. [9] myst *B*, *Vulg.* [10] *Ins.* a *D*. [11] greivour *Vulg.*

the seignory of the manor of C., which is charged with this rent as with a rent service.

Upon this [the plaintiff's counsel] went out to imparl. And they came back and said 'Yes.' So a day was given them to hear their judgment. And at that day, because [the plaintiff] claimed to recover the rent as well in the manor of C. as in the manor of B., where he has complained of disseisin, and because the tenant of the manor of C. was not named [in the writ], it was awarded that [the plaintiff] took nothing by his writ etc.

65. WINGTON *v.* WINGTON (PARSON OF).[1]

If the tenant received the tenement under a deed reserving rent, the lord may distrain though he has never yet had any seisin of the rent. *Semble* that the Statute *Quia emptores* does not prohibit a feoffment in fee simple to hold of the feoffor during his life and after his death of his chief lord. If a man accepts a feoffment contrary to the Statute, *qu.* whether his feoffor can distrain him for services.

William of Wington brought his replevin against Adam, parson of Wington, and others etc., and said that wrongfully they took and caused to be taken his beasts etc.

Laufer avowed the taking etc., and for the reason that the tenements where the taking was made were in the seisin of Adam, who out of his seisin enfeoffed the said William etc. to hold of himself for the term of the life of the said Adam, rendering therefor every year eight marks and doing for him and for his heirs the services due from the tenements, and after his decease to hold of the chief lord of the fee by the services pertaining to the tenements for ever. And because the eight marks of rent [were arrear], he [Adam] avows [the taking as good and lawful]. And he put forward a deed which witnessed what he had said in his avowry, etc.

Hedon demanded judgment of the avowry, for one who wishes to avow for rent arrear ought to say that he avows on some seisin; and that he has not done. Judgment etc.

Bereford, J. He puts forward your writing which witnesses that you received the tenements to hold of him for his life for eight marks. Therefore if you have not paid him the rent [at all] you have done him the greater wrong.

[1] This case is Fitz., *Avowre*, 185.

Hedon. Sire, l'escrit veot qe nous resceumes les tenementz etc. fesaunt au chief seignour les services qe sount dues des tenementz. Et n'entendomps mie en ceo cas qe sur nous pusse destresse avower.

Pass. Sire, il nous semble qu'il ne poet plus fraunc estat clamer qe soun purchace ne veot. Mès soun purchace veot qe les tenemenz soient tenuz de[1] nous par les services de viij. marks. Par quei il nous semble qe nous poumes destresse avower.

Hedon. Unqore demaundoms jugement depus qe statut veot qe desoormes homme soit feffé a tenir de chief seignour, et vous supposez qe vous nous[2] avez feffé a tenir de vous mesmes, q'est encountre fourme de statut. Par quei etc.

Berr. A qi ad il fait tort en ceo cas? Nient a vous,[3] einz a chief seignour etc. Et pur ceo r[espone]z a ceo fait, qe veot qe les tenementz seiount[4] tenuz par viij. marks de Adam etc.

Hedon. Nous conissoms bien la chartre, et vous dioms rien ariere, prest etc.

Et alii econtra.

66. ANON.[5]

Nota de un quare impedit par un gardeyn ou termer.

Nota par *Warr.* qe termer des aunz après soun terme passé porra porter soun *quare impedit* d'une eglise qe se voida duraunt soun terme, et si poet un gardein del eglise qe se voida[6] duraunt sa garde. Et hoc idem patebat[7] inter Johannem Bachoun et Willelmum Wettewelle; le quel bref fut de comune forme et fut chalangé, et par la resoun qe ceo ne acorda mye a la demoustraunce, qe le bref ne dit mye 'ad suam spectat donacionem racione custodie.' Et hoc non obstante si fut le bref agardé bon etc.[8]

[1] *Ins.* luy *A*. [2] *Om.* nous *A*, *D*. [3] *Om.* nient a vous *A*; *supplied from B*. [4] soient *B*, *D*. [5] *Vulg.* p. 33. Text from *A*: compared with *B*, *D*. Headnote from *D*. [6] *Om.* duraunt . . . voida *A*; *ins. B*, *D*. [7] patebit *B*, *Vulg*. [8] *Add* quod mirum fuit etc. *B*.

Hedon. Sir, the writing says that we received the tenements etc. doing to the chief lord the services which are due for the tenements, and we do not understand that in such a case he can avow a distress upon us.

Passeley. Sir, it seems to us that he can claim no freer estate than his [deed of] purchase wills, and that wills that the tenements be holden of us by the service of eight marks. Therefore it seems to us that we can avow the distress.

Hedon. Once more we demand judgment, since the Statute [*Quia emptores*] wills that henceforth a man be enfeoffed to hold of the chief lord, and you suppose that you enfeoffed us to hold of yourselves, and that is against the form of the Statute. Wherefore etc.

Bereford, J. In that case to whom has he done wrong, except the chief lord etc.? Therefore you must answer to this deed which says that the tenements are to be holden for eight marks of Adam etc.[1]

Hedon. We confess the charge and tell you that nothing is arrear. Ready etc.

Issue joined.

66. ANON.

Presentation to a church by termor or guardian.

Note by *War*[*wick*] that a termor for years can after his term has expired bring a *quare impedit* of a church which became vacant during his term, and so may a guardian in case of a church which became vacant during the wardship; and this appeared in a case between John Bacon and William of Wettewelle; and the writ was in common form and was challenged for not according with the declaration, for the writ did not say 'which belongs to his gift by reason of a wardship;' and, none the less, the writ was adjudged good. And this was strange.[2]

[1] It will be observed that the deed did not attempt to make the feoffee hold in fee simple of the feoffor.

[2] The last remark may be no part of the original report.

67. THORNTON (ABBOT OF) *v.* RODEFORD.[1]

Garde, ou piert qe le pere avera la garde du corps de soun fitz demene eygné, tut tenyt la mere l'enfaunt d'altre seignour par service cheveler.

De custodia porté vers cely qe tent par la lei d'Engleterre en demandant le corps de son fuitz eisné, ubi nichil cepit quia pater tenuit tenementa de alio domino per antiquius feoffamentum.

L'Abbé de Thorntone porta soun bref de garde vers Henri de Rodeforde[2] et demaunda la garde du corps Waultier fitz et heyr une Maude, et dit qe la garde a luy appent par la resoun qe ceste Maude tient ceaux tenementz de luy par les services de iij. parties d'un fee de chivaler et morust en soun homage, et issint appent la garde a luy etc.

Toud. A cesti bref ne deit il estre r[espond]u, qu'il ne poet la garde du corps demaunder s'il ne poet la garde des terres recoverir, par resoun des queux terres et tenementz il demaunde la garde du corps. Mès la garde des tenementz[3] ne poet il demaunder, pur ceo qe Henri les tient par la ley d'Engleterre,[4] dount la garde du corps ne deit il avoir.

Spigurnel. Donques vous nous grauntés qe Maude tient de nous ceaux tenemenz par les services etc. et q'ele morust en nostre homage. Jugement, depus qe vous avez graunté les pointz qe nous dounent accioun, si a nous ne apent la garde.

Mot.[5] Waultier est nostre[6] fitz eigné, en qi persone le dreit descendy après la mort Maude. Jugement etc.

Toud.[7] Waltier est nostre fitz eigné et heir apparaunt.[8] Et vous dioms outre qe nous tenoms[9] tenementz de aultre seignour par services qe deyvent[10] garde et de plus auncien[11] feffement, a qi la garde de dreit apent après nostre decès etc. Jugement si, vivaunt Henri, pusset la garde du corps demaunder.

Spigurnel. Coment[12] qu'il dit qu'il tient altrez tenementz etc., ceo ne nous deyt barrer qaunt a ore. Et qaunt Maude morust, meyntenaunt accioun de dreit nous fut acru a la garde demaunder.

[1] *Vulg.* p. 33. Text from *A*: compared with *B*, *D*. Second headnote from *D*. [2] Radeforde *B*, *D*. [3] terres *B*, *Vulg.*; terre *D*. [4] diengleterre *A*. [5] Mutforde *B*; Mutf' *D*. [6] vostre *A*, *D*; nostre *B*. [7] *Ins.* ad idem *B*, *Vulg.* [8] apparisaunt *B*. [9] *Ins.* autres *B*. [10] dounent *B*, *D*, *Vulg.* [11] de eygne *B*, *Vulg.* [12] covient *Vulg.*

67. THORNTON (ABBOT OF) *v.* RODEFORD.[1]

Qu. whether the lord of a woman who has died can demand the wardship of the body of her son and heir while her husband (the father of the infant) holds the tenement by the curtesy. At any rate such a demand will fail if the infant is heir apparent of other lands, and should his father die now the wardship of his body would go to the father's lord by priority of feoffment.

The Abbot of Thornton brought his writ of wardship against Henry of Rodeford and demanded the wardship of Walter son and heir of one Maud, and said that the wardship belongs to him because Maud held these tenements of him by the services of three parts of a knight's fee and died in his homage, and so the wardship belongs to him, etc.

Toudeby. To this writ he ought not to be answered, for he cannot demand wardship of the body unless he can recover wardship of the lands, by reason of which lands and tenements he demands wardship of the body. But wardship of the tenements he cannot demand, for Henry holds them as tenant by the curtesy. So he [the Abbot] ought not to have the wardship of the body.

Spigurnel. Then you concede to us that Maud held of us these tenements by the services [aforesaid], and that she died in our homage. Since you have conceded the points which give us this action [we demand] judgment whether the wardship does not belong to us.

Mutford.[2] Walter is our eldest son, and into his person the right descended after the death of Maud. Judgment etc.

Toudeby (to the same effect). Walter is our eldest son and heir apparent. And we also tell you that we hold tenements of another lord by services which owe a wardship and by a feoffment more ancient [than that on which you rely], and to him the wardship belongs after our decease, etc. Judgment, whether in Henry's lifetime you can demand the wardship of the body.

Spigurnel. Whatever he may say about holding other tenements, that cannot bar us in the present case; for when Maud died, straightway by law an action accrued to us to demand the wardship;

[1] This case is Fitz., *Garde*, 3.

[2] The Spigurnel of this dialogue can hardly be a judge. For this and other reasons it seems not improbable that a small group of cases really belonging to an earlier time has got into some, not all, of our manuscripts at this point.

Par quei nous n'entendomps mye qe par[1] nul tenement qe a vous est pus descendu,[2] nous pussez de nostre avauntage oster.[3] Et d'aultrepart, tot soit il heir Henri plus apparaunt, possible est qe Henri aliene en sa vie ceaux tenementz. Par quei n'entendomps mye qe par cas q'est en nouncerteyn nous pussez de accioun barrer qe est en certeyn acru.

Et quia predictus Abbas concedit quod Walterus[4] est filius primogenitus Henrici qui post mortem suam ei successurus est, et quod tenet alia tenementa de alio domino cui custodia predicti heredis[5] post mortem predicti Henrici per servicium militare pertinet de iure, et que predicto Waltero[6] descendere debent[7] post etc. ut filio et heredi, et quod filius suus primogenitus est ex Matilda, videtur curie quod predictus Abbas in custodia predicta nichil potest exigere vivente predicto Henrico.[8] Ideo concessum est etc.

68. ANON.[9]

Dower porté vers ij. par diverse precipes, jour de bref purchacé tenauntz en comune et de bref retourné en severalté. Et cassatur. Contrarium videtur lex.

Une dame[10] porta soun bref de renable[11] dower vers A. et B. par ij. precipes.

Pass. Le jour qaunt le bref fut purchacé il tinderent en comune. Jugement du bref.

Toud. Vous tenetz ceo[12] en severaulté, prest etc. Et ceo nous suffit a meyntenir nostre bref;[13] qar, tot ust le bref esté malvayse,[14] par le severaulté pus fait si est le bref assez bon.

Pass. Une foitz malvays et tot temps malvays.

Warr. Si cest bref se abate, il covendra doner meillour bref, et ceo ne poet il nient faire.[15] Jugement si cesti bref n'est assez bon.

Malm. Si jeo vous demandas[16] x. acres de terre, tot ne fussez[17] vous tenaunt forsqe de v. le jour de vostre purchace,[18] et[19] les aultres

[1] *Om.* par *B.* [2] descend *A.* [3] *Om. rest of this speech, Vulg. In B it is written but 'vacated.'* [4] *Ins.* qui *A.* [5] Henrici *A*; heredis *B, D.* [6] Willelmo *A*; Waltero *B, D.* [7] debet *A, B, D, Vulg.* [8] *Ins.* etc. *B.* [9] *Vulg.* p. 33. Text from *A*: compared with *B, D.* [10] femme *B, Vulg.* [11] revable *Vulg.* [12] ore *B, D, Vulg.* [13] droit *B, Vulg.* [14] mauveys *B.* [15] *Ins.* en ceo bref *B, D, Vulg.* [16] condemaundasse *B, Vulg.*; demandasse *D.* [17] fuissetz *B, Vulg.*; fussets *D*; fissez *A.* [18] jour du bref etc. *B. Sim. D.* [19] *Om.* et *A.*

and we do not understand that you can oust us from our advantage by reason of any tenement that has since descended to you. And again, although [Walter] be Henry's most apparent heir, it is possible that Henry may in his lifetime alienate [his] tenements, and we do not understand that by a matter which is still uncertain you can bar us from this action which has certainly accrued.

And because the said Abbot concedes that Walter is the firstborn son of Henry who is to succeed [Henry] on his death, and that [Henry] holds other tenements of another lord to whom the wardship of the said [Walter] after the death of the said Henry pertains by law by reason of knight's service—which tenements ought to descend to the said [Walter] after [the death of the said Henry]—and that [Walter] is Henry's son by Maud, therefore it seems to the Court that the said Abbot can exact nothing in the said wardship while Henry is alive. Therefore it is adjudged etc.

68. ANON.[1]

A writ brought against two as tenants in severalty can be abated by the plea that at the date of writ purchased they held in common, although they held in severalty on the day of plea pleaded.[2]

A lady brought her writ of reasonable dower against A. and B. by two precipes.

Passeley. On the day of writ purchased they held in common. Judgment of the writ.

Toudeby. You now hold in severalty. Ready etc. And that is enough for us to maintain our writ; for, albeit the writ had been bad [when purchased], it is made good enough by a subsequent severance [of possession].

Passeley. Once bad, always bad.

War[*wick*]. If this writ is to be abated, it behoves you to give us a better writ; and that [your client] cannot do. Judgment, whether this writ be not good enough.

Malberthorpe. If I demanded of you ten acres of land, although you were tenant of but five on the day of writ purchased and the

[1] This case is Fitz., *Briefe*, 780.
[2] An annotator remarks that the contrary seems to be law.

devenent pus en vostre seisine par voie de purchace, moun bref est asset bon. (Et ex hoc nota en purchaz et nient la ou tenementz descendunt par successioun.[1]) Auxi de ceste parte.

Hengham. Ceo n'est pas purceo qe le bref est bon, mès purceo qe homme[2] ne poet pas bref abatre par nountenure[3] en partie saunz ceo qe vous pusset aultre tenaunt de vous assigner; et ceo ne purretz faire en vostre cas. *Et ideo non est simile.*

Pass. dixit ut supra. Par quey le bref adonqe ne valust rien.

Hengham. Ne unqore ne vaut, qar un malveys bref ne poet estre amendé si noun par la Chauncelrie.[4] Mès ore a jour de bref purchacé si fut le bref malvoise etc.

Et cassatum[5] est.

69. ANON.[6]

Assise de novel diseisine, ou piert qe si jeo pusse alegger qe le demaundaunt relessa et quiteclama en ma seisine par chose de recorde, il avendra mye al assise *sine titulo* de puisné etc.

Novel disseisine ou le tenant afferma sa tenance dreiturele par record. Et pur ceo qe le pleintif ne poeit mustrer title plus tardif si fut agardé q'il ne preist rens.

Un Nichol Bal[7] porta l'assise de novel disseisine vers un William en Baunk.

Heigham.[8] Assise ne deit estre, qar Nichol mesme avaunt ces houres porta un bref d'entré vers William de mesmes les tenementz, et dit qu'il les lessa a William tauncqe com il fut denz age, ou William bota avaunt une fine qe testmoigna relees et quitclame, qe[9] Nichol avoit fait a William de tot soun dreit. Et purceo qe nul homme ne deit estre receu en ceste court a fine lever[10] s'il ne soit de pleyn age[11] et la fyne prove qe a ceo[12] temps vous fustes de pleyn age, si fust agardé par Sir Thomas de Weylaund[13] qu'il ne prist rein par soun bref.[14] Et puis mesme cesti Nichol porta un mortdauncestre de mesme ceaux tenementz de la mort E. soun piere, a quei fut respoundu[15] qe assise de mortdauncestre veot estre porté del derrein

[1] This remark is in the text *A, B, D.* [2] il *B, Vulg.* [3] *Om.* par nountenure *A*; *ins. B.* [4] Chaunceller *Vulg.*; Chaunceller' *B*; Chauncellerie *D.* [5] cessatum *Vulg.* [6] *Vulg.* p. 33. Text from *A*: compared with *B, D.* Second headnote from *D.* [7] de B., *B, Vulg.*; Baillif *D.* [8] Hengh. *B.* [9] qi *A.* [10] levere *A.* [11] *Omit to after next* age, *A, D*; *the omitted words are interlined in B.* [12] comune *Vulg.* [13] Willughby *Vulg.*; Wylyugh' *B, D.* [14] *Add* dentre *B, Vulg.*; *interlined in B.* [15] resceu *Vulg.*

others afterwards came to your seisin by way of purchase, my writ would be good enough. (And note 'by purchase,' for it would not be so if the tenements descended by way of succession.) So in this case.

HENGHAM, C.J. That is not because the writ is good, but because a man cannot abate a writ for partial non-tenure without assigning another tenant, and in the case that you put this could not be done. So it is not a similar case.

Passeley repeated what he had said, and added that [when purchased] the writ was worth nothing.

HENGHAM, C.J. And it is worth nothing now; for a bad writ can only be amended by the Chancery, and here the writ was bad on the day when it was purchased.

Writ quashed.

69. ANON.[1]

A brought a writ of entry against *X* and was defeated by the production of a fine to which he was party. He afterwards brought a mort d'ancestor as on the death of his father and was defeated by the record of the previous action. He cannot now maintain an assize of novel disseisin against *X* unless he can produce some specialty showing that the freehold has come to him since the previous actions, though he desires to aver seisin and disseisin.

One Nicholas Bal brought the assize of novel disseisin against one William in the Bench.

Heigham. An assize there ought not to be, for Nicholas himself before now brought a writ of entry for the same tenements against William and said that he leased them while he was under age to William; and William put forward a fine which witnessed a release and quitclaim which Nicholas had made to William of all his right; and, because no one ought to be received in this Court to levy a fine if he be not of full age, it was awarded by Sir Thomas of Weyland that [Nicholas] took nothing by his writ. And afterwards this same Nicholas brought an assize of mort d'ancestor for these same tenements on the death of his father E.; to which it was answered that an assize of mort d'ancestor should be brought on the last seisin;

[1] The names of the interlocutors make it doubtful whether this case really belongs to 2 Edward II. See the notes to Cases 63 and 68.

seisi et allegea le procès avauntdit; par ount fut agardé qu'il ne prist rein par soun bref. Dount desicome trové est par procès et [1] de ceyenz [2] qu'il mesme nous lessa les tenementz et nous toux [3] jours tenaunt par my soun lees saunz estre osté, n'entendomps mye qe assise deyve [4] estre, si Nichol ne moustre a la court especialté de plus tardif seisine.

Gold. Nous n'avoms pas mestier, mès nous voloms averrir par assise qe nous fumes seisi et diseisi par vous. Et d'aultrepart, a qi mostroms nous especialté etc.? Qar si l'assise deit [5] qe nous fumes seisi par aultre voie qe par l'especialté qe nous meissoms avaunt, unqore recoveroms nostre [6] seisine *non obstante* la diverseté.

Hengham. Si vous agardasset l'assise sauntz ceo qe N. moustrast especialté, il ensiwereit graunt inconvenient [7] de ley; qe, tut usse jeo recovery moun dreit vers Nichol par un graunt assise et il après portast la novel disseisine et pledast al assise sauntz especialté moustrer coment [8] il fut pus seisi, cel petit assise defereit [9] la graunt assise, qe passa en le dreit.

Mutf. Graunt duresse serroit a fair les jurours dire de vostre dreit ou vous ne savetz mesme dire, depus qe nous [10] trovoms en la primere purchaz qe par la fine fait en la seisine William vous ly grauntastes ceaux tenemenz com ceaux etc., ou vous pus portastes le mortdauncestre par quel bref rien ne preistes, purceo qe par [11] le primer bref que vous portastes vous grauntastes estre mesme seisi pus la mort vostre auncestre. Et si vous voderez fraunctenement recoverir, il convendreit qe fraunctenement vous fut acru pus la continuance de ceo procès. Par quei, si rien avez,[12] moustrez etc.

Gold. Non est necesse; qar, si nous portissoms nostre bref de dreit, nous n'averoms pas mestier de ceo fair la ou nous contissoms de nostre seisine demeigne. Dount nous demaundoms jugement.

Hengh. Depus qe en tot le procès avauntdit nous le [13] tenoms en graunt,[14] qar le procès le testmoigne, et Nichol demoustre nulle rien coment fraunctenement luy soit pus acru, demaundoms jugement si

[1] *Om.* et *D.* [2] procees avauntdit *B*, *Vulg.* [3] ceux *Vulg.* [4] doine *Vulg.* [5] die *B*, *D.* [6] recoveroms nostre *B*, *D*; recoverimes nous *A.* [7] inconvenientz *B.* [8] *Ins.* qe *B.* [9] defrait *B*; deferait *D.* [10] *Ins.* ne *A.* [11] *Om.* par *A.* [12] *Ins.* et *A*; si rien en eietz *B.* [13] les *D.* [14] avauntdit si est tenu a graunte *B*, *Vulg.*; tenoms en graunte *D.*

and the aforesaid process [by writ of entry] was alleged; wherefore it was awarded that [Nicholas] took nothing by his writ. Therefore, because it is found by process of this Court that he [Nicholas] himself leased us these tenements and that we were all along seised by his lease without being ousted, we do not think that an assize should be taken, unless Nicholas shows the Court some specialty [in proof] of a later seisin.

Goldington. We have no need to do that. But we will aver by the assize that we were seised and by you disseised. Moreover, to what end shall we show a specialty? If the assize said that we were seised in some way other than by the specialty that we put forward, still we should recover our seisin, notwithstanding the diversity [between our allegation and the verdict].

Heigham. If you awarded an assize without a specialty being shown, a great 'inconvenience'[1] in law would ensue; for then, although I had recovered my right against Nicholas by a grand assize, if afterwards he brought a novel disseisin and pleaded to the assize without showing any specialty witnessing a subsequent seisin, this petty assize might undo the grand assize which passed upon the right.

Mutford. It would be great hardship to make the jurors [in this assize] speak to your right when you yourself do not know how to allege it, since we find in the first suit brought by you that by the fine made in William's seisin you granted these tenements to him as those [which he had of your gift], and you afterwards brought the mort d'ancestor and by that writ you took nothing because by the first writ that you brought you conceded that yourself had been seised after your ancestor's death. And if you would recover freehold it behoves [you to show] that the freehold has accrued to you since the continuance of this process. Therefore if you have anything you must show it.

Goldington. There is no need to do that, for if we brought our writ of right we should not have to do it if we counted upon our own seisin. Therefore we demand judgment.

Heigham. Whereas in the whole of the said process we were [supposed to be] holding by [his] grant,[2] for the process witnesses this, and Nicholas shows nothing whereby the freehold has accrued to him, we demand judgment whether there ought to be an assize. But

[1] That is, a logical fault; perhaps *absurdity* is our best word.

[2] Or perhaps 'Whereas in the whole of the said process this was taken for granted.'

assise deyve estre. Mès nous vous dirroms une verité: Nichol vint pus et se abati,[1] et nous li oustames, com bien nous lust. Et desicome il ne moustre rein de nous[2] qe testmoigne frauncténement estre fait a li pus soun lees demene a nous fait, qe conu est de curt,[3] jugement etc.

Par quei agarde la court qu'il ne preigne rien par soun bref etc.;[4] *quia sine titulo* de puisnee date.

70. ANON.[5]

Assise de novel deseisine de *proficuo capiendo* meintenu par la femme countre le fait soun baroun pur ceo qele averoyt my le *cui in vita.*

Nota si un homme et sa femme ount jointement une lyveresone en une mesoun de religioun[6] et, vivaunt le baroun,[7] un relees et[8] quitclame soit fait, la femme après la mort soun baroun vendera et demaundera la lyveresone, et si ele soit deforcé ou deneé[9] ele portera l'assise et recovera.[10] *Et est racio*, pur ceo qe ele ne put user le *cui in vita*, quia diversum est petere fundum[11] et proficuum, quia in uno casu jacet le cui in vita et in alio non etc.,[12] et si ele ne recoverast par l'assise en le cas avauntdit ele serroit baré a toux jours *quod esset inconveniens.* Et hoc idem accidit inter Johannem de Holm rectorem ecclesie de F. etc.[13]

{Si[14] le baroun relest corrodie qu'est du dreit sa femme, dunt sa femme eit esté seisi, après le decès le baroun el demandera la corrodie; et si homme li deforce el avera l'assise. Mès si le baroun alien la corrodie et le porchaceor seit seisi, *credo* q'el avera *cui in vita.*}

[1] *Ins.* en les tenementz *B*, *Vulg.*; *sim. D.* [2] *Om.* de nous *Vulg.* [3] qe conust dreiture *B*, *D*, *Vulg.* [4] *End here*, *B*, *D*, *Vulg.* [5] *Vulg.* p. 34. Text from *A*: compared with *B*, *P*, *R.* [6] *Om.* de religioun *B*, *Vulg.* [7] *Ins.* par le baroun *B*, *Vulg.* [8] ou *Vulg.* [9] devee *Vulg.* [10] religioun et le baroun relest la feme usera lassise *P*, *R.* [11] fundamentum *B*. *Vulg.*; feodum *P.* [12] *Om.* quia . . . etc. *P.* [13] inter Johanam de Elyngham et personam ecclesie de Foudr' *P*; Joh. de Helin et personam ecclesie de Fundr' *R.* [14] This version from *X.*

we will tell you a truth: Nicholas afterwards came and abated himself in these tenements and we ousted him, as well we might; and since he shows nothing from us which would witness a freehold accrued to him subsequently to his own lease made to us, of which [lease] the Court has cognizance, we pray judgment etc.

It was awarded by the Court that he took nothing by his writ, for he showed no title of later date [than the previous actions, in which he had taken nothing.]

70. ANON.[1]

As a *cui in vita* cannot be used for a profit (*e.g.* a corody), the widow is allowed a novel disseisin where her late husband has released a profit that belonged to her.

Note that if a man and his wife jointly have a livery in a religious house, and in the husband's lifetime a release and quitclaim be made, the wife after her husband's death shall come and demand the livery, and if she be deforced or denied she shall bring an assize and shall recover. The reason is that she cannot use the *cui in vita*, for it is one thing to demand land and another to demand a profit, and the *cui in vita* lies in the one case and not in the other etc. And if she were not to recover in the assize in the case aforesaid, she would be barred for ever, which would be absurd. And this happened in the case between Joan of Elingham and the parson of the church of F. etc.

{If[2] the husband releases a corody which is of the right of his wife, and whereof she has been seised, then after his death she shall demand the corody; and, if she be deforced, she shall have the assize. But if the husband alienates the corody and the purchaser is seised, I believe that she shall have the *cui in vita.*}

[1] This case is Fitz., *Cui in vita*, 18. [2] Another version of the preceding note.

71. ANON.[1]

Mortdauncestre, ou bastardy fut alege en la persone le demaundaunt; et qaunt la parole fust resomouns, le tenaunt et la femme soy fyrent essonier de service, et le peti *cape* agardé.

Thomas Appelon[2] et Johanne sa femme et Thomas le Chaumpioun et Eglengtyn sa femme porterent lour mortdauncestre devaunt Sires Johan de Battiforde,[3] William Houard etc. vers B. et Sare sa femme. Qui[4] vinderent et diseint qe Johanne fust bastard. Par quei ele siwi taunt qe l'evesqe certefia la court q'ele fut legittime. Par quei fust agardé[5] une resomounse, et al jour de la resomounse retorné B. et Sare sa femme se fesoint essonier de service le Roi. Et purceo qe la essone ne gist nient pur Sare, si fust agardé le petit *cape* pur le demaundant. Et al jour del *cape* retourné Sarre vint et dit q'un des parties demaundauntz fut mort. Par quei agarderent qe les parties alerent sauntz jour *non obstante processu antedicto.*

72. ANON.[6]

Replegiari, en quel cas le gardein purra faire avowerie d'altre estat qe del estat le prochein auncestre qe fut en sa garde et quel noun.

Nota qu'un gardeyn ne poet fair avowrie de plus haut estat qe le prochayn auncestre l'emfaunt q'est en sa garde, si issint ne soit qe celuy auncestre fut dedenz age et morust denz age, qar donqes poet il avower[7] de la seisine l'auncestre qe fut de age pus la limitacioun. T[estibus] Willelmo de Bello Campo et Waltero de Uptone.

73. DE L'ISLE *v.* HANRED.[8]

Entré, ou estraunge serra mye receu d'averer eschaunge saunz especiaulté mustrer.

[1] Not in *B* or *Vulg.* Text from *A*: compared with *D.* [2] de Apeltone *D.* [3] Bateforde *D.* [4] *Om.* qui *A.* [5] *Om.* agarde *D.* [6] Not in *B* or *Vulg.* Text from *A.* [7] avowere *A.* [8] *Vulg.* p. 35. Text from *A*: compared with *B*, *D.* Second headnote from *B.*

71. ANON.

An essoin *quia in servicio regis* does not lie for a woman. Where after resummons a woman who is sued with her husband attempts to cast such an essoin, the petty *cape* issues.

Thomas of Appleton and Joan his wife and Thomas the Champion and Eglentine his wife brought their mort d'ancestor before Sirs John of Batesford, William Howard etc. against B. and Sarah his wife, [who] came and said that Joan was bastard. Wherefore she sued until the Bishop certified the Court that she was legitimate. So a resummons was awarded, and on the day of its return B. and Sarah his wife had themselves essoined for the King's service. And because the essoin would not lie for Sarah, the petty *cape* was awarded for the demandant. At the day of the return of the *cape* Sarah came and said that one of the demandants was dead. Therefore the Justices awarded that the parties should go without day, notwithstanding the said process.

72. ANON.

In what cases a guardian avowing a distress upon a tenant of the infant heir can rely on a seisin older than that of the immediate ancestor.

Note that a guardian cannot make an avowry on an estate higher than that of the last ancestor of the infant who is in ward, unless it be that this ancestor was within age and died within age; for in that case [the guardian] can avow on the seisin of an ancestor who was of full age since [the time of] limitation. Witness, [a case between] William of Beauchamp and Walter of Upton, etc.

73. DE L'ISLE *v.* HANRED.[1]

The father and mother (*A* and *B*) of the demandant (*C*) being seised of land in *X* in right of *B*, the father enfeoffed *L* thereof in exchange for lands in *Y* and *Z*. Then *L* enfeoffed *M* of the land in *X*. After the deaths of *A* and *B*, a writ of entry, *sur cui in vita*, for the land in *X* is brought by *C*, who is heir of both his parents, against *M*, the assignee

[1] Proper names from the record. This case is Fitz., *Cui in vita*, 17.

De ingressu super le cui in vita ou eschaunges par le pere le demandant furent allegez de par qi il ne demanda ren si noun com baroun sa miere etc.

Rogier del Ile porta soun bref d'entré vers Richard de Hanrede, et demaunda certeyns tenementz etc. Et counta qe ceo fut soun dreit et soun heritage etc., et en les queux mesme cesti Richard n'ad entré si noun par Richard de Hanrede, a qi William de Ille jadiz baroun Maude etc. meyre Roggier de Ille, qi heir il est, ly lessa, a qi ele en sa vie countredire ne pout.

Will. Sire, la ou Roggier de Ille demaunde etc.,[1] mesmes ceux tenements q'ore sount en demaunde furent en la seisine l'avauntdit William, et hors de sa seisine les dona a Richard de Hanrede nostre feffour, qui estat nous avoms, en eschaunge pur aultres terres, des queux terres etc. mesme celui William après l'eschaunge fust seisi et morust seisi de mesme ceaux tenementz ; après qi mort vous entrastes ceaux tenementz com fitz e heyr le dit William, et estes huy ceo jour seisi. Jugement si vous accioun pusset avoir.

Herle. Queles eschaunges[2] qe furent faites entre William et Richard,[3] vous n'estes celuy a qi les eschaunges si firent, enz tot estraunge par vostre conissaunce demeygne, et ne moustrez nul especialté. Jugement etc.

Will. Si nous fussoms[4] enpledé de un estraunge,[5] vous nous[6] serrez[7] lyé a la garrauntie. Jugement etc.

Berr. Vous dites vostre talent, qar la nature des eschaunges ne lye fors entre mesmes les persones et entre lour heirs du saunk, et vous estes estraunge par vostre dit demesne. Par quei etc. Et d'aultrepart, tot fut issi qe vous le purrietz voucher com assigné, ne convendreit il mye qe vous eusset moustré especialté qe testmoigne l'assignement (*quasi diceret sic*) ?

Toud. Sire, soun purchase demene suppose qe nous sumes assigné Richard. Donqe quel mestier en avoms de moustrer especialté, a qi il ne poet estre partie etc. ? Et d'aultrepart, si le chief seignour fut entré mesme cel tenement par la forfeture Richard de Hanrede soun tenaunt, et Roggier de Ille eust porté atiel bref com il fet ore, il serroit receu d'averer les eschaunges saunt especialté moustrer[8] etc. *Sic ex parte ista.* Estre ceo nous ne poumes voucher nostre feffour, qar il forfist et ne poet nul heir avoir.[9] Jugement,

[1] *Om. from here to* des queus terres *A. A similar omission in D. Words supplied from B.* [2] quele eschaung' *A.* [3] *Om.* entre . . . Richard *B, Vulg.* [4] feissoms *A.* [5] autre *B, D, Vulg.* [6] *Ins.* ne *D.* [7] serrietz *B.* [8] *Om.* saunt . . . moustrer *B, D, Vulg.* [9] nul bref vers lui *B* (*over erasure*) ; nul br' avoir *D.*

of *L*. Can *M*, without producing specialty in proof of the exchange and assignment, rebut *C* from his action? Can he do so if *C*, as heir of *A*, is seised of the land in *Y* that was given to *A* by the exchange?

Roger de l'Isle brought his writ of entry against Richard of Hanred and demanded certain tenements etc. And he counted that this was his right and inheritance etc., into which this Richard has no entry save by Richard of Hanred, to whom William de l'Isle, sometime husband of Mabel etc., mother of Roger de l'Isle, whose heir he is, leased the tenements, and which [William the said Mabel] could not in his lifetime contradict.

Willoughby. Sir, whereas Roger de l'Isle demands etc. lands etc., we tell you that these same lands now in demand were in the seisin of the said William, and out of his seisin he gave them to Richard of Hanred, our feoffor (whose estate we have) in exchange for other lands, and of those lands William was seised, and he died seised thereof, and after his death you entered upon them as son and heir of the said William, and are this day seised. Judgment, whether you can have an action.

Herle. Whatever exchange may have been made between William and Richard, you are not the person with whom the exchange was made, but a total stranger by your own confession, and you show no specialty. Judgment etc.

Willoughby. If we were impleaded by a stranger, you would be bound to warrant us. Judgment etc.

Bereford, J. You talk at random. The nature of an exchange is such that it only binds between the persons [who are party to it] and their heirs in blood. And you are a stranger by your own showing etc. Therefore etc. Again, although the case were such that you as an assign could vouch him, would it not behove you to have shown some specialty witnessing the assignment? (He implied that this must be done.)

Toudeby. Sir, [the writ of] his own purchasing supposes that we are an assign of Richard, so what need is there for us to show a specialty, to [the trying of which] he could not be party etc.? Moreover, if the chief lord had entered on these tenements for a forfeiture committed by Richard of Hanred, his tenant, and Roger de l'Isle had brought such a writ as he brings now, he [the lord] would be received to aver the exchange without showing specialty etc. And so in this case. Besides, we cannot vouch our feoffor, for he forfeited and can have no heir.[1] And since you are seised of the tenements

[1] It will be seen from our note of the record that the heir of the tenant's feoffor had been hanged for felony.

depus qe vous estes seisi des tenemenz qe donetz furent en eschaunge par vostre piere, qi heir vous estes, si vous pussez rien demaunder.

Pass. Nostre accioun est acru par le dreit qe fut en la persone Maude, le quel dreit est a nous descendu com a fitz et heyr. Par quei nous demaundoms jugement, si celuy q'est estraunge, qe nul especialté ne moustre, par les eschaunges faites par celuy de [1] qui nul estat ne clamoms, nous [2] pusse [3] d'accioun barrer.

Et sic ad iudicium. *Hunt.* après mist avaunt un fait qe testmoigna l'assignement, et ne poet estre receu par *Berr.* si la partie nel voleit graunter, et dist qe, tot eust il relessé et quiteclamé, nent plus ne serroyt receu etc.

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 176), r. 22, Northampt.

Roger de l'Isle demands against 'Richard de Hanred de Pisseford' a messuage and five virgates of land in 'Pisseford' [Pitsford, Northamptonshire] as his right and inheritance, into which tenements Richard the tenant has no entry unless through (*per*) 'Richard de Hanrede de Brampton' [hereinafter called Richard of Brampton], to whom (*cui*) William de l'Isle, sometime husband of Mabel de l'Isle, Roger's mother, whose heir he is, demised them, Mabel being unable to contradict her husband in his lifetime. The count alleges Mabel's seisin in demesne as of fee and of right in the time of Henry III. with a taking of esplees, and a descent from her to the demandant as son and heir.

The tenant says that the demandant can claim no right; and that the tenements were sometime in the seisin of the said William de l'Isle, father of the demandant (whose heir the demandant is), who gave these tenements with others in the vill of Pitsford, and likewise the manors of Haselbeche, Brampton, and Grafton in the said county, to Richard of Brampton in exchange for the manors of Hanred [mod. Hendred] and Asshehamstede in Berkshire and Barton Hanred in Northamptonshire, which he received from Richard of Brampton; and that he, William, died seised thereof; and that the demandant succeeded William as son and heir and was seised of the manor of Barton Hanred on the day when he, the demandant, purchased his writ, namely, on 26 Nov. 1 Edw. II. (1307); and that Richard of Brampton enfeoffed Richard the tenant of the tenements now demanded; and that, although by this feoffment Richard the tenant is the assignee of Richard of Brampton (who bound himself and his heirs to warranty), nevertheless he, the tenant, cannot in this case vouch the heir of Richard of Brampton to warranty, because William, son and heir of Richard of Brampton, committed felony and therefor was hanged.[4] But, since he,

[1] par *B.* [2] ne *A*; nous *D.* [3] pussetz *A*; puissetz *B*; puisse *D.* [4] *Calend. Geneal.* p. 527. This event took place in or before 24 Edw. I.

which were given in exchange by your father, whose heir you are, we pray judgment whether you can demand anything.

Passeley. Our action has accrued to us by the right which was in the person of Mabel, and this right has descended to us as son and heir. Therefore we demand judgment whether one who is a stranger, and who shows no specialty, can bar us from our action by an exchange made by a person from whom we claim no estate.

And so to judgment. *Hunt* afterwards put forward a deed which witnessed the assignment, and BEREFORD, J., would not receive him, unless the [other party] consented, and [BEREFORD] said that although [the other party] had released and quitclaimed, still [the party who put forward the deed] should not be received etc.

Note from the Record (*continued*).

Richard the tenant, is the assignee of Richard of Brampton, and since William [de l'Isle], father of Roger (whose heir Roger is), received the manors of Hanred, Asshehamstede, Heyford, and Barton Hanred in exchange for the tenements now demanded and other manors as aforesaid from Richard of Brampton (whose assignee the tenant is), and since William de l'Isle died seised of them and the demandant was seised of the manor of Barton Hanred by hereditary descent from his father William on the day of writ purchased (as the tenant is ready to aver), he, the tonant, demands judgment whether the demandant can claim any right in the tenements so given in exchange.

The demandant replies that he ought not to be precluded from action by the said exchange; and he demands judgment for the following reason: namely, that whereas the tenant asserts that the exchange was made between William de l'Isle and Richard of Brampton (whose assign the tenant professes to be), he produces no specialty (*factum speciale*) to show the exchange or to show the fact that he is assignee of Richard of Brampton, but by his said answer makes himself a total stranger (*totaliter se facit extraneum*) to both the exchange and the assignment, especially as he confesses that the heir of Richard, his feoffor, has committed felony, for which he [was hanged], and the tenant does not allege that Mabel, the demandant's mother (on whose seisin the demandant demands), was party to the exchange, or that by the exchange there accrued to her anything which descended to the demandant as her heir, and from this it follows that if the tenant were now impleaded for the said tenements by a stranger, he would not be able to bind the demandant to warranty by reason of an exchange and assignment to which he, the tenant, was a stranger. The end of this replication runs as follows: 'Nec eciam ipse Ricardus allegat quod predicta Mabilla mater ipsius Rogeri de cuius seisina etc. fuisset pars escambii predicti vel quod aliquid ei per escambium illud accrevit quod ipsi

Note from the Record (*continued*).

Rogero tanquam heredi predicte Mabille descendit, per quod sequitur quod si predictus Ricardus de predictis [tenementis] nunc petitis ab extraneo implacitaretur ipsum Rogerum ad warantiam virtute escambii predicti tanquam assignatus, [quibus quidem] escambio et assignacioni idem Ricardus est extraneus, ligare non posset.'

Thereupon the tenant was asked if he has any specialty (*speciale factum*) for the said exchange and assignment which he alleges. His answer has in part perished, but from what is legible we may gather that he produced no deed. He offers to aver that he is the assignee of

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Dower, ou il fust receu a demaunder par prove de testmoigne saunz mustrer rien de l'assent. Ou le tenaunt dit q'ele receust tenementz en alowaunce etc. et l'aultre qe nent en alowaunce de tenementz ore demaundez, et receu.

Dowere assigné par le fuiz d'assent soun pere, ou el n'avoit ren d'assent: non obstante ele fuist receu.

Richard de Londone[2] et Johanne sa femme porterunt un bref de dower vers Johan de Tyton gardeyn des terres et del heyr Robert le Baroun,[3] et demaunderent la terce partie de j.[4] mesuage etc., et counterent qe ceo fut le dower assigné[5] mesme cele Johanne, et des queux William le Baroun fitz et heir Robert le Baroun, jaditz baroun mesme cele Johanne, del assent[6] et la volunté Robert soun piere la dowa al heus de mouster etc., dount ele rien n'ad etc.

Will. Oy du bref. (Et le bref fut: 'Precipe Johanni de Tyntone custodi terre et heredis Roberti le Baroun etc.')

Lauf.[7] Jugement du bref, qar le bref suppose gardeyn del heir Robert le Baroun, et nous dyoms qe Robert le Baroun avoit un fitz William par noun[8] mullieré et soun heyr, piere l'enfaunt q'est ore en garde. Jugement etc.

Toud. Robert survesquit William soun fitz, issint qe l'emfaunt est heir Robert.[9] Jugement etc. Et d'aultrepart, si Johan de Tyntone fust a demaunder la garde des terres et del heir etc., soun bref dirroyt 'custodiam terre et heredis Roberti le Baroun.' Estre ceo, si nous deissoms qe Johan de Tyntone fut gardeyn del heyr

[1] *Vulg.* p. 35. Text from *A*: compared with *B*, *D*. Second headnote from *B*. [2] Loundr' *B*. [3] le Brune *B*; le Broun' *D*. [4] xj. *A*, *D*; un *B*. [5] *Ins.* a *B*. [6] par lassent *D*. [7] Will. *B*, *D*. [8] *Ins.* et *B*, *D*. [9] *Ins.* et vous dyoms qe Robert de Brune avoit un fuiz William etc. *B*.

Note from the Record (*continued*).

Richard of Brampton, and that the exchange was made in manner aforesaid, and he demands judgment, especially on the ground that it is not consonant to law that the tenant should have [the tenements now in demand as well as the manor which] devolved to him by hereditary descent.

A day is given to hear judgment on the quindene of Trinity. Nothing is said upon the roll as to the belated offer of a deed.

Another entry on the same roll shows Roger de l'Isle bringing against Thomas Broun a writ of escheat for the manor of Grafton and alleging that William Hanred was convicted of felony and hanged.

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Action for dower *ex assensu patris*. (1) The writ is brought against a person described as guardian of the heir of the husband's father, and this is upheld, the husband having died in his father's lifetime. (2) A view is granted after debate. (3) The endowment by assent may be proved by witnesses without specialty. (4) *Semble* the grantee of a wardship, having only a chattel, cannot vouch the grantor.

Richard of London and Joan his wife brought a writ of dower against John of Tynten, guardian of the lands and the heir of Robert Brown, and demanded the third part of a messuage etc., and counted that this was the dower assigned to Joan, whereof William Brown, son and heir of Robert Brown, sometime husband of Joan, endowed her at the church door by the assent and will of Robert his father etc. and whereof she has nothing etc.

Willougby craved a hearing of the writ, and it ran: 'Command John of Tynten, guardian of the land and heir of Robert Brown etc.'

Laufer. Judgment of the writ, for it supposes him guardian of the heir of Robert Brown, and we say that Robert Brown had a legitimate son, William by name, who was his heir and father of the infant who is now in ward.

Toudeby. Robert outlived William his son, so that the infant is the heir of Robert. Judgment etc. And again, if John of Tynten were to demand the lands and the heir etc., his writ would say 'the wardship of the land and heir of Robert Brown.' Besides, if we said that John of Tynten was guardian of the heir of William Brown, that

[1] Proper names from the record. This case is Fitz., *Dower*, 125.

William le Baroun, ceo serroit a supposer qe William avoit estat, et ceo serroit un faux etc.

Malm. Vous porretz avoir bref acordaunt a vostre cas et a vostre accioun, a dire issint : ' Precipe Johanni de Tyntone custodi terre et heredis Willelmi filii Roberti le Broun ; ' qar, coment qe vous dites qe Robert survesquit William, unqore fut William proprement soun heyr, qar nule dreit de Robert ne deyt [1] descendre a cest etc. si noun par William soun piere, q'est plus haut et digne en le saunk.[2] Jugement etc.

Will. Si le fitz William fust a demaunder de la seisine Robert soun ael et eust entrelessé William, rien ne luy vaudereit, purceo qe soun estat est dependaunt de William soun piere. Jugement etc.

Toud. Nostre bref ne suppose mye qu'il est gardeyn del fitz et heyr Robert, einz del heir Robert le Broun etc. Jugement etc.

Berr. Il dit qe Robert survesquit William soun fitz, issint qe le dreit qe fut en la persone Robert est descendu *immediate* a cesti etc. Par quey le bref est assez bon.

Malm. Nous demaundoms la vewe etc.

Friss. Le vewe ne devetz avoir, qe vous ne devetz estre mesconisaunt queuz tenementz vous tenetz en noun de garde par le nounage le heyr Robert. Jugement etc.

Malm. Nous ne sumes mye issint [3] en comune bref de dower ou la femme soun dower demaunde des tenementz qe furent a soun baroun, enz sumes [4] en cas [5] ou vous biez recoverir dower d'aultre [6] fraunctenement ; ne nous sumes [7] celuy de qi assent vous demaundez, enz un gardeyn de fait, issint qe nous ne poums estre [8] ascerté de vostre demaunde si noun par le vewe [9] etc.

Berr. Y n'y [10] sount qe iij. brefs de dower : scil. un [11] *unde nichil habet*, comune bref [12] d'assignement de dower ou le baroun dowe sa femme de soun fraunctenement et [13] cesti bref *de assensu patris*. Mès en comune bref vous n'averez la vewe, n'en [14] le bref de dower assigné, ne cesti bref ne varie del comune bref, enz se vount [15] tot en un ; qar ou le comune bref dit [16] ' racionabilem dotem,' cesti bref dit ' terciam partem ; ' les queux paroulles sounent tot en un, qar renable dower n'est aultre qe la tierce partie. Par quei il semble qe

[1] puist *B* ; poet *D*. [2] qest plus digne du saunc *B*, *D*. [3] Nous neimes my yci *D*. [4] eymes *D*. [5] *Rep.* en cas *A*. [6] dautri *D*. [7] ne nous neymes *D*. [8] *Om.* estre *A* ; *ins. D*. [9] *Ins.* jugement *B*, *D*. [10] yl y *B*. [11] *Om.* scil. un *A* ; *ins. B*. [12] *Ins.* bref *D*. [13] *Om.* et *A*. [14] ne eyt *A* ; ne en *D*. [15] sovent *B* ; sounent *D*. [16] qar en le comune bref il dit *B*.

would suppose that William had an estate and would be a falsehood, etc.

Malberthorpe. You could have a writ agreeing with your case and your action; and it would say 'Command John of Tynten, guardian of the land and heir of William, son of Robert Brown;' for, although you say that Robert outlived William, still, properly speaking, William was Robert's heir, for no right can descend from Robert to [this infant] save through William [the infant's] father, who was higher and worthier in the blood [than was the infant]. Judgment etc.

Willoughby. If the son of William were to demand [tenements] upon the seisin of Robert his grandfather and were to omit [mention of] William, this would be of no avail, for his estate is dependent from William his father. Judgment etc.

Toudeby. Our writ does not suppose that he is guardian of the son and heir of Robert; it supposes that he is guardian of the heir of Robert Brown etc.

Bereford, J. He says that Robert outlived his son William, so that the right which was in Robert's person descended to [the infant not mediately, but] immediately. Therefore the writ is good enough.

Malberthorpe. We demand a view etc.

Friskeney. You ought not to have a view, for you cannot be mistaken as to the lands you hold in wardship by reason of the nonage of Robert's heir. Judgment etc.

Malberthorpe. We are not here in a common writ of dower where the woman demands [dower] of the tenements which were her husband's, but we are in a case where you are striving to recover dower of another's freehold,[1] and we are not the person upon whose assent you [base your] demand, but are a guardian *de facto*, and without having a view we cannot know for certain what is your demand.

Bereford, J. There are but three writs of dower, namely, *unde nichil habet*, the common writ of assigned dower, where the husband endows his wife out of his freehold, and this writ *de assensu patris*. But in the common writ you shall not have a view, nor in the writ of assigned dower; and this writ does not vary from the common writ. Both are to the same effect. The common writ says 'her reasonable dower;' this writ says 'the third part;' but these phrases come to the same thing,[2] for 'reasonable dower' is nothing

[1] The freehold of the husband's father, which the husband did not live to inherit.

[2] Apparently the best reading is 'sound all in one.'

vous ne devetz la vewe avoir. Et d'altrepart Robert graunta qe William soun fitz dowa[1] sa femme de la tierce partie de ceo q'est compris en le bref etc., issint qe la volunté Robert s'estent[2] taunt avaunt com si William mesme fust seisi des tenementz. Et vous ne devez mye mesconustre qe vous ne[3] tenez mye[4] mesmes les tenementz. Par quei etc.

Williby. Si nous vousissoms[5] aleger nountenure, poet estre qe nous serroms bien r[eceu], la quel excepcioun si gist meutz[6] après la vewe qe avaunt. Jugement etc.

Scot. ad idem. Nous ne[7] sumes qe[8] gardeyn du fait, et si nous vochassoms nous ne saveroms de quei vocher a gararuntie en certeyn si par la vewe noun. Jugement etc.

Berr. De quei vocherez vous, qar ele bie[9] recoverir fraunc-tenement, et vous donqe[10] a vocher par la ou vous n'avetz qe chatel ou vous avetz vostre recoverir par aultre voye? Ne serra etc.[11]

Scot. Nous ne vocheroms fors de nostre estat etc. Et d'aultre-part celuy qe serroyt vouché est gardeyn de dreit qe porra[12] plus haut respouns doner qe nous, et de meillour condicioun serroyt. Par quai graunt duresce serroit si a ceo ne fussoms resceu.

Toud. Vous ne poetz qe n'avetz aultre estat qe chatel nountenure alegger ne[13] voucher etc. Et d'aultrepart, nous sumes ici[14] en un *unde nichil habet*, ou la vewe n'est mye grauntable. Jugement etc.

Malm. En un *unde nichil habet* homme poet avoir la vewe en cas etc. Mès la plus forte resoun qe vous avetz de nous oster de la vewe est qe nous ne devoms mesconustre etc., issint qe la vewe par vostre dit n'est mye necessarie. Mès qe ele soit necessarie jeo vous proves;[15] qe posoms qe Robert le Baroun, de qui assent vous portet cestui bref,[16] eust pus l'assent purchacé tenementz, auxi com il est possible, les queux tenementz pount estre en la garde mesme cesti Johan par le nounage le heir Robert, issint qe Johan ne seit de quei ne des queux tenementz vous demaundez la tierce partie. Par quei il[17] semble qe la vewe est necessarie. Et d'aultrepart nous ne sumes mye en cas de statut, issint qe vous nous pussetz par statut ouster. Jugement etc.

Et al dereyn la vewe fut graunté de la partie, et avoynt[18] jour as

[1] dowast *B*, *D*. [2] ne sestent pas *B*; *sim. D*. [3] *Om.* ne *B*, *D*. [4] *Om.* mye *B*, *D*. [5] si vous vousissez *B*. [6] meltz *D*. [7] *Om.* ne *Vulg.*; *erased in B*. [8] *Om.* qe *Vulg.*; *erased in B*; Nous neimes qe *D*. [9] *Ins.* de *D*. [10] et vous dounque *B*; *sim. D*. [11] voie par quei etc. *B*, *D*. [12] porreit *D*. [13] et *D*. [14] *Om.* nous . . . ici *B*; nous avoms yci *D*. [15] proefs *B*, *D*. [16] *Om.* cestui bref *A*; *ins. B*, *D*. [17] *Ins.* me *B*, *D*. [18] avoit *B*.

else than the third part. So it seems that you ought not to have the view. Moreover, Robert granted that William his son might endow his wife of the third part of what is comprised in the writ etc., so that Robert's assent was as effectual as if William himself had been seised of the tenements. And you cannot make any mistake as to whether you hold the same tenements. Wherefore etc.

Willoughby. If we desired to allege non-tenure, perhaps we should be received, and the plea of non-tenure lies better after a view than before it. Judgment etc.

Scotre to the same effect. We are only guardian *de facto*, and, if we were to vouch, we should not know for certain what to vouch for unless we had a view. Judgment etc.

Bereford, J. But what could you vouch for, since she is striving to recover the freehold? And you, who have only a chattel, cannot vouch, but you have your recovery in another manner.

Scotre. We should vouch merely for our estate, etc. Moreover, he who would be vouched is guardian *de iure*, and he could give an answer higher up than any that we can give, and would be in a better position than ours. Therefore it would be a great hardship if we were not received [to vouch him].

Toudeby. You, who have no other estate than a chattel, cannot allege non-tenure or vouch [a warrantor]. Besides, we are here in an *unde nichil habet*, where a view is not grantable. Judgment etc.

Malberthorpe. In an *unde nichil habet* a man may in some cases have the view, etc. But the highest reason that you have for ousting us from the view is that we cannot make any mistake [about the tenements demanded]; so that, according to what you say, the view is not necessary; and I will prove to you that it is necessary. Put case that Robert Brown, upon whose assent you bring your writ, had after giving the assent purchased tenements—as it is possible that he did—and that these tenements are in the custody of this same John by reason of the nonage of Robert's heir, so that John does not know of what tenements it is that you demand a third part: it seems to me that in such a case a view is necessary. And again, we are not in the statutory case where by Statute[1] you could oust us from [the view]. Judgment etc.

In the end the view was granted by consent, and the parties had a

[1] Stat. Westm. II. (13 Edw. I.) c. 48: 'In a writ of dower where the dower in demand is of land that the husband aliened to the tenant or his ancestor, where the tenant ought not to be ignorant what land the husband did alien to him or his ancestor, though the husband die not seised, yet from henceforth view shall not be granted to the tenant.'

utaves de la Trinité. A quel jour Johan et les altres només etc. furent essonez, et avoint jour outre as utaves de Saint Michel. A quel jour Johanne et Robert[1] counterent vers Robert[2] de Tyntone et les aultres, scil. Johan le fitz Robert le Broun[3] et Isabelle sa femme, vers qi[4] il demaunderent la tierce partie d'un mies et d'un demi acre de terre etc.

Malm. defendy, et demaunda quei il avoit[5] del assent.

Westcote. Sire, nous vous dioms q'ele fust dowé etc. et[6] devaunt Estevene de D.,[7] Johan de T.,[8] Johan de G.,[9] Nichol de B.,[10] et Thomas de Treistham,[11] qe cy sount[12] prest a prover et a testmoygner l'assent.

Malm. C'est un accioun foundé sur ley especyal, ou il covendreit moustrer le fait especial celuy de qi assent vous demaundetz. Et desicome vous n'avetz qe[13] testmoignaunce, qe n'est forsqe une voice,[14] demaundoms jugement si nous devoms respoundre etc.

Scot. Si nous fussoms chacez a respoundre par[15] tiel testmoignaunce, issint porra la plus estraunge femme du mounde recoverir dower etc.

Et hoc non sufficiebat eis. Preceptum fuit quod respondeat[16] ultra etc.

Malm. Johan de M.[17] et E.[18] sa femme vous diount qu'il n'ount rien en la demi acre de terre, dount il demaundent la tierce partie, sy noun du lees Robert le Brun, qe de ceo enfeffa Johan etc. en fraunc mariage et Isabelle sa fille. Et de ceo vouchoms a garrauntie Robert[19] le fitz et le heir William le Broun, qi corps et terre sount en la garde Johan de Tyntone etc. (sauntz nul mencioun[20] faire en sa[21] vouchere de ceo mies.[22] Et ceo fut la cause, purceo qu'il n'avoyt[23] nul meys en la chartre compris. Et bota avaunt la chartre *quod dictum donum testatur*).

Et Johan le fitz Robert dit qu'il fut soul tenaunt de sa demaunde, coment qe sa femme fut joynt en le bref. Et de ceo voucha *directe, ut supra.* Mès de ceo respouns[24] rien ne fust enroulé taunqe le *cape* fut retourné par la defaute la femme. Et en dreit del mies et de ceo qe fust en la mayn Johan de Tyntone, si disoynt il q'ele ne dust dower avoir, purceo q'ele mesme après la mort William soun baroun

[1] Richard et Jone *B*; Ric. et Joh. *D.* [2] Jon. *B*; Johan *D.* [3] *Om.* le Broun *B, D.* [4] queux *B*; *sim. D.* [5] avoint *D.* [6] *Om.* et *B.* [7] Dunsel *B, D.* [8] Trevoythyn *D.* [9] Grell' *B, D.* [10] Bargothon *D.* [11] Treyzian *D.* [12] *Om.* qe . . . sount *B.* [13] forsqe *D.* [14] voiz *B*; voce *D.* [15] a *B.* [16] responderent *B, D.* [17] Metheros *B.* [18] Enme *B*; Emme *D.* [19] *Om.* Rob. *B, D.* [20] memorie *D.* [21] soun *B, D.* [22] del mees *B*; *sim. D.* [23] nyavoit *B*; niavoit *D.* [24] *Ins.* il *A*; *om. B, D.*

day on the octave of Michaelmas. At that day Richard and Joan counted against John of Tynten and the others, namely, John the son of Robert[1] and Isabel his wife, against whom they demanded the third part of a messuage and of half an acre of land, etc.

Malberthorpe defended, and asked what they had to show the assent [of Robert Brown].

Westcote. Sir, we tell you that she was endowed etc. in the presence of Stephen of Demsel, John of Treveythen, John of Grellys, Nicholas of Bargoithon, and Thomas of Treyhithian, who are here ready to prove and witness the assent.

Malberthorpe. This is an action founded on special law, where you ought to show the special deed of him upon whose assent you base your demand; and, since you have only the testimony [of witnesses], which is merely a voice, we ask judgment whether we ought to answer etc.

Scotre. If we were driven to answer by such testimony, a woman who was the completest stranger in the world might recover dower etc.

But [their argument] did not avail them, and they were ordered to answer over etc.

Malberthorpe. John of Metheros and Emma his wife [against whom the third part of a messuage and of half an acre are demanded] tell you that they have nothing in the half acre of land, save by the lease of Robert Brown, who thereof enfeoffed John of Metheros in frankmarriage and Emma his wife, and for this they vouch to warranty Robert, son and heir of William Brown, whose body and land are in the custody of John of Tynten etc. (And in his voucher he made no mention of the messuage; and the reason was that no messuage was comprised in the charter. And he put forward a charter which witnessed this gift.)

And John, son of Robert, said that he was the only tenant to the demand, although his wife was joined in the writ, and for this he vouched directly as above. But of this answer nothing was enrolled until the *cape* was returned on the default of the wife. As to the house and so much as was in the hands of John of Tynten, they said that she [the demandant Joan] ought not to have dower, because after the death of William her husband she herself received the moiety of

[1] One of our manuscripts calls him John the son of Robert le Broun. The record that we have found throws no light on this part of the case.

receust la moyté de N.[1] ove les apurtenaunces a tenir en noun de dower en allowaunce de tut[2] soun dower qe a ly afiert de les avauntditz tenementz, des queux ele demaunde ore soun dower, et de ceo se tient payé, prest d'averer.

Herle. Q'ele ne tient rien en allowaunce en N.[3] de ceo q'ele ore demaunde, prest etc.

Et disoint *Hertepol, Scot.*, et[4] *Malm.* qe Johan de Tyntone ne pout nyent[5] voucher, coment qe[6] fust fors gardeyn du fait, et disoint atiele resoun com *Ber.* avoit dit avaunt en mesme le plee etc.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 34, Corn.

Richard of London and Joan his wife demand against John of Tynten, guardian of the land and heir of Robert le Brun, the third part of certain tenements in Hamet and elsewhere, and against John of Metheros and Emma his wife the third part of a messuage and of half an acre of land, as being those of which William le Brun, son and heir of Robert le Brun, and late husband of Joan, with the assent of the said Robert, endowed her at the church door when he espoused her. The count states that the espousals and endowment took place in the vill of St. Probus on Tuesday in Easter week in 22 Edw. I. in the presence of Thomas of Treyhithian, John of Treveythen, Stephen of Demsel, John of Grellys, Nicholas of Bargoithon, and others unnamed.

John of Metheros and Emma his wife, as to the third part of half an acre demanded against them, say that the land was in the seisin of Robert le Brun, who gave it to them in frankmarriage and bound himself and his heirs to warranty. And they vouch the heir of William, sometime husband [of Joan], whose body and lands are in ward to John of Tynten. They make profert of a charter which witnesses the gift and warranty. Therefore order is given that the said guardian be summoned for the morrow of All Souls and have the heir to warranty. (*Note continued on the opposite page.*)

74B. ANON.[7]

Nota de dote.

Nota qe une femme porta bref de dowere vers un gardein de fet; le quel voloit avoir voché a garauntie le gardeyn de dreit, et ne poeit pas estre receu, pur ceo qe ceo serroit a recoveryr fraunktenement par soun vocher ou il n'avoit si noun chatel. Secus versus termarium, quia ibi tenebit duas partes per tantum tempus per quantum posset levare proficuum tercie partis recuperate.

[1] Nansmelyn *B, D.* [2] *Om.* tut *A, D.* [3] ren en Nansmelyn en allowance *D.* [4] *Om.* et *A.* [5] mye *B.* [6] *Ins.* ne *D.* [7] Not in *Vulg.* Text from *P.*

Nansmelyn with the appurtenances, to hold by way of dower in allowance of the dower that belongs to her out of the said tenements whereof she now demands her dower, and therewith she held herself content; and this they were ready to aver.

Herle. She held nothing in Nansmelyn by way of allowance for what she now demands.

Hertepol, Scotre, and *Malberthorpe* said that John of Tynten could not vouch, since he was only guardian *de facto*; and they gave the same reason as that given above in this case by Bereford.

Note from the Record (*continued*).

John of Tynten, the guardian, as to the third part demanded against him, and likewise John of Metheros and Emma, as to the third part of the said messuage demanded against them, say that Richard and Joan [the demandants] ought not to have dower thereof, for they say that the said Joan, after the death of the said William her late husband, received a moiety of the manor of Nansmelyn with the appurtenances in the same county to hold by way of dower in allowance of the dower belonging to her in the said tenements in which she now demands dower, and therewith she held herself content [et unde se tenuit contentam]; and this they are ready to aver etc.; and they demand judgment.

And the said Richard and Joan [the demandants] say that the said moiety of the said manor was not assigned to Joan by way of dower as the said John of Tynten and the others allege; and they pray that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded.

It will be observed that the discussion reported in the Year Book extends to a matter not comprised in this record, namely, a demand against one John son of Robert, and Isabella, his [John's] wife.

74b. ANON.[1]

Dower against guardian *de facto*, and against termor.

A woman brought a writ of dower against a guardian *de facto*, and he desired to vouch the guardian *de iure*, and could not be received to do this, because in that case by his voucher he might get to the recovery of a freehold where he had only a chattel. Otherwise is it when the writ is against a termor, for in that case the termor shall hold the two parts until he has levied the profit that he would have had from that third part which has been recovered against him.

[1] Apparently a note of one of the points discussed in the preceding case.

75. ANON.[1]

Cessavit, ou piert qe enfaunt deinz age avera soun age.

Un Lewlyn porta le *cessavit* vers une femme et ses[2] iij.[3] fitz, qe vindrent en court et furent dedenz age, et disoynt qu'il ne pount[4] estre partie a cesti bref de dreit et prierent lour age.

Lewelyn. Ceo est lour cesser demene; et n'entendoms[5] mye, de hore qe cest accioun nous est[6] acru de lour tort demene, qu'il deivent[7] lour age avoir. Et d'aultrepart, auxi bien deyvent[8] les services estre faites en soun nounage com en soun pleyn age, et nomement ou il demoert seisi des terres. Jugement etc. Estre ceo Lewlyn est un pour[9] homme et n'ad dount vivire[10] si de ces[11] services noun. Par quei duresse serroit s'il eussent lour age en ceo cas.

Hengh. Regardez vostre fee[12] et s'il meynoverent destreinetz.

Et fut agardé qu'il eussent lour age. Et[13] sic nota[14] en accioun real et[15] nient mixt si avera homme soun age, tot soit accioun[16] acru de soun fait demene.

76A. ANON.[17]

Ou la femme qe ne fust mye nomé en le bref fust receu d'abatre le bref par mettre avaunt fait qe prova l'estat le baroun joint oed ly.

Un homme fust enpledé de certeynz tenementz, qe fist defaute, par quei les tenements furent a perdre. A jour qe seisine de terre dust estre agardé, si vint la femme celuy qe fit defaute et pria qe la defaute le baroun ne ly tornast[18] en prejudice. Et dit qe les tenementz qe furent issint a perdre si furunt de soun heritage et ele nient nomé en le[19] bref. Et demaunda jugement du bref. Et bota avaunt fait qe testmoigna qe les tenementz furent de soun heritage.

Wast.[20] A ceo ne devetz estre receu, qe vous n'estes mye partie a

[1] *Vulg.* p. 37. Text from *A*: compared with *B*, *D*. [2] ces *A*. [3] ij. *B*. [4] porreient *B*. [5] nentendent *A*; nentendoms *B*, *D*. [6] soit *B*. [7] doynent *Vulg.* [8] doinent *Vulg.* [9] povers *B*. [10] vyvre *B*. [11] si des *B*; si de ses *D*. [12] temps *B*: fee *A*, *D*. [13] In *B*, *Vulg.* this note appears as a separate *placitum*. [14] *Ins.* qe *D*. [15] *Om.* et *B*, *D*. [16] laccion *B*, *D*. [17] Not in *B*, *Vulg.* Text from *A*: compared with *D*. [18] attornast *D*. [19] al *A*; el *D*. [20] West. *D*.

75. ANON.

In an action of *cessavit* the parol demurs.

One Llewelyn brought the *cessavit* against a woman and her three sons. They came into court and were under age, and said that they could not answer to this writ of right and prayed their age.

[*Counsel for*] *Llewelyn.* The writ is founded on their cessation of services, and we do not understand that they ought to have their age when an action has accrued to us by their own tort. Besides, the services ought to be done as well in their nonage as in their full age, and especially where they remain seised of the lands. Judgment etc. And again, Llewelyn is a poor man and has not wherewithal to live except these services; and therefore it will be a hardship if they be allowed their age in this case.

Hengham, C. J. Await your moment,[1] and, if they cultivate [the land], distrain them.

And it was awarded that they should have their age. So note that in an action which is real, and not mixed, a person shall have his age, although the action accrued by reason of his own tort.

76A. ANON.

A woman, whose husband is making default, is received to defend her right and to abate the writ, although she is not named in the writ.[2]

A man was impleaded for certain tenements. He made default, so that they were on the point of being lost. On the day when seisin of the land was to be awarded, the wife of the defaulter intervened and prayed that her husband's default might not turn to her prejudice. And she said that the tenements which were about to be lost were of her heritage and that she was not named in the writ; and she prayed judgment of the writ and put forward a deed which witnessed that the tenements were of her inheritance.

Westcote. To that you cannot be received, for you are not a party

[1] Or 'Watch your fee.'

[2] But compare the case (No. 23) reported above at p. 76.

nous, qar vous n'estes mye nomé en nostre bref. Jugement etc. Et d'altrepart, si vous fussetz receu [1] nostre bref abatre par la ou nostre bref ne fait nul mencioun de vous, ceo serroit saunz garraunt, et n'entendomps mye qe la curt saunz garraunt tiel r[espounse] [2] par la ou vous estes estraunge voille receivre. Estre ceo jeo pose que deus soient jointement feffez, et l'un soit empledé soul et out [3] fait defaute après defaute issint qe les tenementz seynt a perdre, et l'autre joynt feffé en la manere qe vous est venuz veigne et voille le bref abatre, il ne serra pas a ceo receu. Nent plus ne devetz vous.

Staunt. *Aliud est* en cas de joint feffement qe en cas q'est ore entre mayns, qar la averet le joynt feffé soun recoverir en la vie l'autre, scil. par assise ; [4] qar ceo serroit malveys lay a delayer le dreit de la femme et sa accioun tauncque après la mort soun baroun, et par la ou ele ad la curt ascerté [5] qe les tenementz sount de soun dreit et soun heritage.

Et pus l'atourné le demaundaunt [6] pria congé de quer [7] meillour bref, et avoit. Autrement la femme oust [8] abatu le bref,[9] *non obstante* q'ele n'estoit nomé en le bref.

76B. ANON.[10]

Un bref d'entré fut porté vers un homme del dreit sa femme, qe fist defaute après defaute. La femme vint en court et dit [11] qe lez tenementz dount soun baroun est enpledé sount de soun heritage, et prie qe nule defaute etc. Et pria de estre receu etc.

Frisk. La femme n'est pas nomé en le bref. Jugement si ele deit estre receu.

West. Si deux sount [12] joynt feffez et le un fut enpledé, et feit defaute, et l'autre vensit en court et feit sa suggestioun etc., jeo n'entenke pas q'il poeit pleder en chef, qar, s'il pledast, ceo serroit saunz garaunt. Mès il avereit soun recoveryr par assise.

Ber. Ore avez vous bien pledé pour la femme, qar en l'un cas il ad soun recoveryr meyngtenaunt par assise. Mès en ceo cas la femme n'avera pas soun recoveryr vivaunt soun baroun. Par qei meyndre

[1] *Ins.* a *D.* [2] tiel r' *A* ; tiel resp' *D.* [3] eit *D.* [4] *Om.* scil. par assise *D.* [5] encerte *D.* [6] et pus le termer al dd' *D.* [7] quere *D.* [8] avoit *D.* [9] *Ins.* et *D.* [10] Text from *P* : compared with *M.* [11] *Om.* dit *P.* [12] fussent *M.*

to our action, not being named in the writ. Judgment etc. Also, if you were received to abate our writ when our writ makes no mention of you, [the judgment] would be without warrant; and we do not understand that without warrant the Court will receive such an answer where you are a stranger. Moreover, I put case that two persons are jointly enfeoffed and one only of them is impleaded and he has made default after default, so that the tenements are on the point of being lost, and then the other of the joint feoffees comes in the manner in which you have come and wishes to abate the writ, he shall not be received to this. No more ought you to be received.

Stanton, J. The case of joint feoffees differs from the case that is now in hand, for in the former the one joint feoffee would have his recovery even in the lifetime of the other, to wit, by an assize; and it would be bad law to delay the right of the wife and her action until after her husband's death, and this in a case in which she has certified the Court that the tenements are of her right and her heritage.

Afterwards the demandant's attorney prayed and obtained leave to seek a better writ. Otherwise the wife would have abated his writ, though she was not named in it.

76b. ANON.[1]

A writ of entry was brought against a man [who held] in right of his wife. He made default after default. The wife comes into court and says that the tenements of which her husband is impleaded are of her heritage, and prays that no default [may turn to her prejudice]. And she prayed to be received.

Friskeney [for the demandant]. She is not named in the writ. Judgment, whether she can be received.

Westcote [for the demandant]. If two be jointly enfeoffed and one of them be impleaded and make default, and the other come into court and make his suggestion, I do not think that he can plead in chief, for, if he pleaded, that would be without warrant, and he shall have his recovery by assize.

Bereford, J. Now you have well pleaded [not for your client, but] for the woman. For the joint feoffee gets his recovery at once by an assize, whereas here the woman cannot recover while her husband is alive. So it is a less hardship that the writ abate, and [that

[1] Apparently another report of the preceding case.

duresse est qe le bref soit abatu et puis soit conceu vers eux deux qe la femme soit chacé a soun *cui in vita.*

Et le demaundaunt ne poeit desdire qe ceo ne fut le heritage la femme. Par qei il ne prist rien par soun bref.[1]

77A. CRESSY *v.* ST. LO.[2]

Fourme de doune en le *reverti*, ou le tenaunt mist avaunt relès del auncestre le demaundaunt fait en sa seisine et l'estat continué. Et l'altre traversa le poynt.

De forma doni en le *reverti* ou relès l'auncestre le demaundaunt fuist mys avaunt en barre en la seisine celui q'ore fuist tenaunt.

Roggier le fitz William de Croscy[3] porta soun bref de forme de doun en le *reverti* vers Thomas de Seynt Ley,[4] et[5] counta de la seisine Sibille sa miere, qe de ceo fust seisi etc. preignaunt les espleez etc., qi hors de sa seisine dona a un Richard et a les heirs de soun corps etc.,[6] et si Richard deviast saunz heir etc., le quel Richard devia saunz heirs de soun corps, issint qe le dreit de la reversioun[7] de ceaux tenementz reverti a Sibille, et de Sibille a Roggier q'ore demaunde com a fitz et heyr.

Thoud. La ou Roggier demaunde etc. et counta[8] de la seisine Sibille qe dona etc., et purceo qe celuy a qi le doun se fist devia saunz[9] etc., et de Sibille a li com a fitz etc., Sire, nous vous dioms qe Sibille, de qi seisine il prent soun tittle, nous relessa et quitclama. Jugement, si encountre le fait soun auncestre accioun pusse avoir.

Herle. Nous dioms qe Richard, a qi les tenementz furent donetz en fee taillé,[10] par qui mort nous demaundoms, survesquit Sibille nostre miere, qi fait il botent avaunt en court. Jugement.

Scrop. La repplicacioun qe vous donez a lour respouns poet avoir deux entendementz.[11] Un est qe Richard, par qi mort vous demaundez, fut seisi en temps de la confeccioun de ceo fait, issint qe celuy a qi le fait fust fait fust hors de[12] seisine, et par taunt entend[oms] qe la quitclame est nulle. Un altre est qe Thomas, qe bote avaunt ceo fait, fust seisi, et[13] en sa seisine la quiteclame fait, issi qe adonqe Richard n'avoit rien[14] par my ceo fait, et[15] ad con-

[1] *Add.* einz la mercy *M.* [2] *Vulg.* p. 37. Text from *A*: compared with *B*, *D*. Second headnote from *B*. [3] Cressi *B*, *D*. [4] Loy *B*, *D*. [5] qe *A*; qi *D*. [6] *Om. until after next* corps *A*. *Supplied from B*, *D*. [7] revers *A*; reversioun *B*. [8] counte *B*, *D*. [9] *Ins.* heir *D*. [10] *Ins.* etc. *B*. [11] double entendement *B*. [12] *Ins.* sa *B*. [13] *Om.* et *A*, *D*. [14] *Ins.* et *B*, *D*. [15] *Om.* et *B*, *D*.

a new writ] be conceived against the two, than that the woman be driven to her *cui in vita*.

The demandant could not deny that it was the wife's heritage, and therefore he took nothing by his writ.

77A. CRESSY *v.* ST. LO.[1]

In answer to a formedon in the reverter, the tenant pleads a release to him by the demandant's ancestor, the donor of the estate tail. He must allege that he was seised when the release was made. To this allegation it will be no sufficient reply that the tenant in tail outlived the donor.

William son of Roger of Cressy brought his writ of formedon in the reverter against Thomas of St. Lo, and counted on the death of Sibil his mother, who was thereof seised etc., taking the esplees etc., and out of her seisin gave to one William de Cressy and the heirs of his body etc., so that the right of the reversion of these tenements returned to Sibil, and from Sibil [it descended] to William, the now demandant, as son and heir.

Toudeby. Whereas William demands etc. and counts upon the seisin of Sibil, who gave etc., and, for that the donee died without [an heir of his body, the right reverted to Sibil and descended] from her to the demandant as her son and heir, now, Sir, we tell you that Sibil, from whose seisin he derives his title, released and quitclaimed to us. We demand judgment whether he can have an action against the deed of his ancestor.

Herle. We tell you that William, the donee in fee tail, upon whose death we demand, outlived Sibil our mother, whose deed they put forward in court. Judgment etc.

Scrope, J. The replication which you give to their answer may have two meanings. The one is that William, upon whose death you claim, was seised at the time of the making of this deed, so that he to whom the deed was made was out of seisin, and that therefore the deed must be taken to be null. The other is that Thomas, who puts forward the deed, was seised, and that in his seisin the deed was made, so that William at that time had nothing, and that [Thomas]

[1] Proper names from the record.

tinué[1] son estat taunc q'ore. Par quei il covent qe vous dietz qe Richard, en[2] temps qe le fait fust fait, fust seisi des tenementz qe vous ore demaundez solom la forme, et cel estat et cele seisine ad continué sauntz interrupcioun taunc q'il morust, saunt ceo qe Thomas n'out[3] rien etc.

Herle. Et nous le voloms.

Toud.[4] Qe Sibille nous relessa et quiteclama et obligea luy et ses[5] heirs a la garrauntie[6] en nostre seisine, saunt ceo qe Richard n'out rien au[7] temps ne pus, prest de l'averrer.

Et alii e contra.

77B. CRESSY *v.* ST. LO.[8]

Fourme de doun en le *reverti*, ou le doneour avoit relessé et quitclamé a celi vers qi le bref fut porté, et puis furent a l'averement qe la quitclame ne fut pas fet en sa seisine.[9]

William le fitz Rogier porta son bref de forme de doun vers Thomas de Foleyn,[10] et demanda certein tenementz donz[11] Isabel sa miere fut seisi etc.; la quel hors de sa seisine dona mesmes ceux tenemenz a William et a les heirs de son corps etc.,[12] et les queux après la mort l'avantdit William al avantdite[13] Isabel revertir deivent, purceo qe William devia sanz heir[14] etc.

Toud. Action ne put il avoir qar Isabel sa miere de qui etc. relessa etc. en la seisine Thomas, et obliga lui etc.[15] Et s'il fut empledé, vous etc. Jugement, si encontre etc.[16]

Fris. Par ceo fet ne poez nous barrer; qe celui a qi le doun se fit survesquit Isabel et[17] morust seisi sanz heir solonc la forme, issint qe nostre action nous acrust après la mort Isabel.[18] Jugement.

Stantone. Il est possible qe William fut seisi etc., et qe William granta les tenemenz a Thomas, et qe Isabel relessa en la seisine Thomas,[19] et qe William reprist estat de Thomas. Issint est l'acquitance[20] bone.[21]

Scrop ad idem. Il est possible qe Thomas disseisi William et qe

[1] contenu *B*; contenue *D*. [2] *Ins.* cel *B*; ceux *D*. [3] navoit *B*. [4] *Om.* Toud., *giving what follows to* Herle, *A.*; *but B, D give* Toud. [5] ces *A*. [6] *Ins.* et *A*; *om. B, D*. [7] a cel *B*; a ceu *D*. [8] Text from *M*: compared with *R, P, L*. [9] Headnote from *P*. [10] Fallein *R*; Sillon' *P*. [11] dount *R, P, L*. [12] engendrez *R, P, L*. [13] l'avauntdit W. fitz e heir l'avaundite *R, P, L*. [14] *Ins.* de soun corps *P, L*. [15] et ces heirs a la garantie *R, P*. [16] encountre ceo fet pussez rienz demaunder *P*; *sim. L*. [17] *Om.* et *M*. [18] W. etc. *R*. [19] *Om.* et . . . Thomas *M*; *ins. R, L*; et qe J. relessa a T. *P*. [20] la quiteclame *R*. [21] issint qe la quit' est bone *P*.

has continued his estate until now. Wherefore it behoves that you say that William at the time when the deed was made was seised of the tenements that you demand according to the form [of the gift] and continued this estate and this seisin without interruption until his death, without this that Thomas had anything etc.

Herle. That we will do.

Toudeby. And we say that Sibil released and quitclaimed to us and obliged herself and her heirs to warranty, without this that William had anything at that time or afterwards. Ready to aver.

Issue joined.

77b. CRESSY *v.* ST. LO.[1]

In answer to a formedon in the reverter, the tenant pleads a release with warranty by the demandant's ancestor. Issue is taken on the question whether the releasee was seised. The use of an *absque hoc* illustrated.

William son of Roger brought his writ of formedon against Thomas of St. Lo and demanded certain tenements whereof Sibil his mother was seised etc., who out of her seisin gave the same tenements to one William of Cressy and to the heirs of his body etc., which tenements after the death of the said William, for that he died without an heir of his body, ought to revert to the said William [the demandant] as son and heir of the said Sibil.

Toudeby. Action he cannot have, for Sibil his mother, from whom [he takes his title], released in the seisin of Thomas, and obliged herself and her heirs to warranty. And if [Thomas] were impleaded [you would be bound to warrant]. Judgment, whether against [the warranty] etc.

Friskeney. By this deed you cannot bind us, for he to whom the gift [in tail] was made outlived Sibil and died seised without an heir according to the form [of the gift], so that an action accrued to us after Sibil's death. Judgment.

Stanton, J. It is possible that William [the donee in tail] was seised etc. and that he granted the tenements to Thomas, and that Sibil released in the seisin of Thomas, and that William afterwards retook an estate from Thomas. In that way the quitclaim would be good, [even if William outlived Sibil].

Scrope, J., to the same effect. It is possible that Thomas disseised

[1] Proper names from the record.

Isabel relessa en la seisine William a Thomas,[1] et pus qe William recoveri par assise mesmes les tenemenz, après qi mort Thomas ad happé[2] mesmes les tenemenz. Quidez vous qe Thomas ne lui barreit pas (*quasi diceret sic*) ?

Herle. C'est un question, et[3] nous voloms averrer qe Isabel dona mesmes les tenemenz a William, qe William continua soun estat[4] tut sa vie issi qu'il ne fut unqes diseisi,[5] issi qe tel[6] fet en la seisine Thomas ne pout[7] estre fet.

Toud. Tauntamount q'il[8] ne fut pas seisi qaunt la quiteclame fut fet. Q'il fut seisi et qe Isabel relessa en sa seisine auxi com nous avoms dit, prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 67, Linc.

William, son of Roger de Cressy of Hoddesak, demands against John, son of William of Barneby of Fenton, two messuages and two bovates of land in Fenton, and against Thomas, son of Gilbert de St. Lo [Sancto Laudo], a messuage in Claypol, which Sibilla the demandant's mother (whose heir he is) gave to William de Cressy and the heirs of his body issuing, and which after his death ought to revert to the demandant by the form of the said gift, since the donee died without an heir of his body issuing. The count states that Sibilla was seised in her demesne as of fee and right in the time of Henry III. by taking esplees; and that she gave the tenements to William in the form aforesaid; and that he died without an heir of his body issuing; and that the right reverted to Sibilla and descended from her to the demandant as her son and heir.

John says that he ought not to answer to this writ, for he does not hold the whole of the tenements demanded against him, for Cecily his mother holds a third part in dower and so held on the day of writ purchased; and this he is ready to aver; and he demands judgment. (*Note continued on the opposite page.*)

[1] *Om.* et . . . Thomas *R*; et qe Johane en sa seisine relessa *P*; et qe Isabel relessa en la seisine Thomas *L*. [2] T. happa *P*. [3] mes *P*. [4] sa seisine *L*. [5] vie sanz ceo qe T. fut unqes seisi *R*, *P*; *sim. L*. [6] ceo *P*; cet *L*. [7] poiez *M*; pout *R*; poieit *P*; poet *L*. [8] qe T. *R*, *P*, *L*.

William, and that Sibil released in the seisin of Thomas, and that afterwards William recovered by an assize, and that after William's death Thomas has 'happed' these tenements. Do not you think that [in that case] Thomas could bar [the demandant]? (Implying that he could.)

Herle. That is [an open] question, and we will aver that Sibil gave these tenements to William, that William continued his estate throughout his life, and that he never was disseised in such wise that such a deed [of release] could [effectually] be made to Thomas.

Toudeby. That amounts to this, that Thomas was not seised when the quitclaim was made. Ready to aver that he was seised and that Sibil released in his seisin as we have said.

Issue joined.

Note from the Record (*continued*).

The demandant says that John holds the whole and held it on the said day; and he prays that this be inquired by the country. Issue is joined.

Thomas says that, as regards the tenements demanded against him, the demandant can claim no right on Sibilla's seisin. For he says that, the tenements being in his seisin, Sibilla remised and quitclaimed to him all right that she had in the tenements by a writing, of which he makes profert; and he demands judgment.

The demandant says that the writing of quitclaim ought not to prejudice him, for William de Cressy, to whom the tenements were given in form aforesaid, outlived Sibilla and continued his seisin, so that (*ita quod*) at the time of the making of the said writing Thomas was not in seisin of the tenements and had nothing in them; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Hilary.

The replication runs thus: Et Willelmus dicit quod predictum scriptum quieteclamacionis ei preiudicare non debet in hac parte etc.: quia dicit quod predictus Willelmus de Cressy cui predicta tenementa data fuerunt in forma predicta supervixit predictam Sibillam et seisinam suam continuavit in predictis tenementis ita quod predictus Thomas tempore confeccionis predicti scripti non fuit in seisina de predictis tenementis nec aliquid habuit in eisdem.

78A. FISHER *v.* NEWGATE.[1]

Dette, ou le defendaunt dit q'il fut enprisoné a la swte le pleintif, et le pleintif conust ceo, mès q'il soy obligé par altre cause; et le defendaunt demaunda jugement de sa conisaunce; et purceo q'il ne voleyt altre chose dire, fut agardé qe le pleintif recoverist.

Richard Russel[2] porta soun bref de dette vers Johan de Newgate et demaunda c. sous, et bota avaunt un escrit, qe voleyt qe Johan de Newgate luy avoit graunté estre tenuz en les c. sous avauntditz pur trespas qe mesme celuy Johan l'avoyt fait.

Lauf.[3] Cele escript ne nous doit nuier[4] qar nous fumes emprisoné etc.[5]

Hunt. Sire, nous vous countroms la verité: qe la ou mesme cesti Johan par sa fauxe conspiracie et soun faux procurement avoit fait enditer mesme cesti Richard issint qe Richard de cesti fauxine et conspiracie en fourme de ley suwit vers mesme cesti Johan devaunt ceaux[6] justices etc. taunqe a sa siwt fust attaché, et en[7] amendement du trespas, qe luy avoit fait, si graunta il de sa bone volunté estre tenuz a Richard en ceste dette. Et demaundoms jugement, del houre qe la cause de ceste dette sourde d'un[8] tort q'il nous fist, s'il pusse dire q'il fust enprisoné.

Lauf. Et nous jugement, depus q'il ad graunté mesme qe nous fumes emprisoné a sa siwt demene, si fet fait en tieu temps nous deyve[9] grever.

Berr. Vous nous dirretz, voletz vous ou noun, si[10] vous feistes ceo fait par force d'enprisounement qe Richard[11] vous fist et nyent pur[12] altre enchesoun, ou vous grauntez[13] ceo qe la partie ad dit.

Lauf. ne voleit autre choce dire, par quei[14] Sire Hervi agarde qe Richard recovera sa dette.

[1] *Vulg.* p. 37. Text from *A*: compared with *B*, *D*. [2] Ussell *B*; Hussell' *D*. [3] West. *B*, *D*. [4] nuire *B*; nure *D*. [5] qar nous esteimes al heure etc. en la prisone le Roi en tiel lieu etc. et a la sute mesme celui Richard. Jugement *B*; *sim. D*. [6] teux *B*, *D*. [7] *Om.* en *A*; *ins. B*, *D*. [8] du *B*; de *D*. [9] doyne *Vulg.* [10] qe *B*, *D*. [11] Vic. *B*, *Vulg.*; Ric. *D*. [12] par *B*. [13] graunterez *B*. [14] *Om.* quei *A*; *ins. B*, *D*.

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Semble that if a defendant, imprisoned in an action of trespass, makes a bond to the plaintiff for the payment of amends for the trespass and thereby procures delivery from gaol, the bond is not necessarily void for duress.

Richard Fisher brought his writ of debt against Robert of Newgate and demanded a hundred shillings and put forward a writing, which said that Robert of Newgate had granted him to be bound in the said hundred shillings in respect of a trespass that the said Robert had done him.

Laufer. This writing ought not to hurt us, for we were at that time imprisoned in the King's prison in such a place at the suit of Richard himself. Judgment etc.

Hunt. Sir, we will plead the truth. This Robert, by his false conspiracy and false procurement, had caused the said Richard to be indicted, so that Richard, for this falsehood and conspiracy, sued in form of law against Robert before such and such justices, until at his suit [Robert] was attached; and in amendment of the trespass done to [Richard, Robert] of his free will granted to be bound to Richard in this debt. And, since the cause of this debt arises from a tort that he did to us, we demand judgment whether he can say that he was imprisoned.

Laufer. Since he has conceded that we were imprisoned at his suit, we demand judgment whether we are to be harmed by the deed that was then made.

Bereford, J. Whether you like it or no, you shall tell us whether you made this deed because of the imprisonment by Richard and for no other cause, or whether you admit what the [other] party has said.

Laufer would say nothing else, so Sir Hervey [of Stanton, J.] awarded that Richard should recover his debt.

[1] Proper names from the record. This case is Fitz., *Dures* 18.

78B. FISHER *v.* NEWGATE.[1]

Un A. porta son bref de dette vers Robert de N. et demanda c. sous et mist avant fet qe le tesmoigna.[2]

Lauf. Par my cest fet nous ne poez lier ne[3] rien demander, qar nous estoimes[4] en prisoun[5] le jour de la confeccioun etc.[6] Et demandoms jugement.

Ber. En qi prisone, et par qi,[7] et a qi sute?

Lauf. En la prisone le Roy et a la sute meme cesti A.

Hunt. Nous suwoms vers lui a la comune ley de qe lei il fut atteint,[8] issint qe pur trespas q'il nous avoit fet, si fut il[9] agardé a la prisone; et, pur nostre gré fere del[10] trespas, il nous fit cele obligacion de[11] la dite dette. Et demandoms jugement si par ceo fet ne serra[12] lié, depus qe vous ne poiez dire qe nous sumes seignour de la prisone ne gaioler.[13]

Lauf. [14] A vostre sute fumes[15] enprisoné et leynz malement demenez taunt com nous avoms[16] fet cele obligacion, et meyntenant après la confeccion fumes deliveré.[17] Par qei demandoms jugement si ceo fet nous deive lier.[18] Et d'autrepart ley veot en ceo[19] cas qe vous pregnez seurté d'altre[20] taunt q'il[21] soit deliveré et q'il se pusse adonqe obliger, et noun pas en prisone.[22] Jugement.

Berr. Vous dirrez q'il fut en prisone par procès de ley a sute com il ad dit ou noun.

Lauf. Ne put estre dedit qe nous sumes emprisonez etc. et qe justices furent en alauntz et qe par doute de devier en prisone si feimes cel obligacion. Et demandoms jugement.[23]

Hervi.[24] Pur ceo qe vous ne poiez dedire qe vous ne fustes emprisoné par agard pur le trespas qe vous lui feistes, si[25] agarde la[26] court q'il recovere etc.

[1] Text from *M*: compared with *P*, *L*. [2] tesmoigna la dette *L*. [3] *Om.* lier ne *P*. [4] fuimes *P*; fumes *L*. [5] enprisone *L*. [6] del fet *P*; de ceo fet *L*. [7] *Ins.* enprisone *P*, *L*. [8] de qe . . . atteint *added by a late hand*: lei *doubtful M*. [9] Sire nous siwymes vers ly pour trespas qil avoit a nous [fait] devant tiel justices, de quel trespas il fut ateynt, par qei il fut *P*; *sim. L*. [10] et pur fere amendes de cel *L*. [11] il se obliga en *P*, *L*. [12] ne serriez bien *P*; si serreit *L*. [13] gayler *P*. [14] *Ins.* Si *P*, *L*. [15] estoimes *P*; esteymes *L*. [16] aveymes *P*; avymes *L*. [17] *Om.* et . . . delivere *P*. [18] nuyre *L*. [19] tel *P*. [20] dalt' *by a late hand*, *M*; dez autrez *P*. [21] de altre qe yl *L*. [22] delivere et noun pas qil se oblige en prisone *P*; *sim. L*. [23] *Om.* last two speeches *P*, *L*. [24] Stant (?) *P*; Stauntoun *L*. [25] desdire qe ceo ne soit vostre fait et vous feites le obligacion pour un trespas fet a ly, et pur ceo gree fites, et par cel gree fere futes delivere, si *P*, *sim. L*, *but* a luy par tiel gree fustes vous deliveres si agarde etc. qe A. recovere etc. [26] laz *M*; ceste *P*.

78b. FISHER *v.* NEWGATE.

One A. brought his writ of debt against Robert of N., and demanded a hundred shillings, and put forward a deed which witnessed this.

Laufer. By this deed you cannot bind us or demand anything, for we were in prison on the day of the making [of the deed]. We demand judgment.

Bereford, J. In whose prison, and by whom imprisoned, and at whose suit?

Laufer. In the King's prison, and at the suit of this same A.

Hunt. We sued against him at the common law, by which law he was convicted, so that for the trespass that he had done to us he was adjudged to prison, and, to satisfy us for the trespass, he made this bond for the said debt. And we pray judgment whether he shall not be bound, since you cannot say that we are lord of the gaol or the gaoler.

Laufer. At your suit we were put in prison, and while therein were badly treated until we had made this bond, and when it was made we were forthwith delivered. Therefore we demand judgment whether this deed ought to bind us. Moreover, in such a case the law requires that you should take sureties for [the prisoner] until he be delivered, and when delivered—but not while he is in prison—he can bind himself. Judgment.

Bereford, J. You shall say whether, as he has said, [your client] was imprisoned by suit and process of law.

Laufer. It cannot be denied that we were [thus] imprisoned; and the Justices were on the point of departure,[1] and for doubt that we might die in prison we made that bond. And we demand judgment.

Stanton, J. Forasmuch as you cannot deny that you were imprisoned by judgment for the trespass that you did him, therefore the Court awards that he [the plaintiff] recover etc.

[1] It will be seen below that the defendant's counsel succeeded in getting this last assertion on to the record, but by way of interlineation. This looks as if the plea had been actually enrolled while the argument was proceeding.

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 177), r. 86, Hertf.[1]

Richard le Fishere de Thele sues Robert of Neugate for a debt of a hundred shillings. The count states that whereas on Saturday the feast of St. Barnabas in 34 Edw. I. [11 June, 1306], at St. Albans, Robert had bound himself to Richard for payment of the said sum, one half at Christmas then next, and the other at the following Michaelmas, Robert has not paid and has refused to pay and still refuses. A writing is then put forward under Robert's name which witnesses that on the said day, at St. Albans, Robert bound himself to be holden (*obligavit se teneri*) to Richard in a hundred shillings, along with William of Goldyngton and others, to wit, each of them for the whole (*in solidum*), in respect of (*pro*) divers trespasses done by Robert to Richard, concerning which Richard was preferring complaints against Robert by bills before John Boutetourte and his companions, justices of oyer and terminer in the said county.

Robert confesses the writing, but says that Richard can exact nothing from him by reason of that writing in this behalf; for he says that at the time of the making thereof he was in prison at St. Albans; and that he was attached at Richard's suit for an alleged trespass, so that by the force and duress of prison and for fear of remaining in prison after the departure of the justices, he made the said writing touching the said debt: and he demands judgment whether that writing should prejudice him. (*Note continued on the opposite page.*)

79. ANON.[2]

Dower, ou piert qe le tenaunt serra mye receu a douner respounse qu'est repugnaunt en ly meme. Dower assigné ou nountenure en partie fut allegé et de ceo dona tenaunt, et il n'abatit pas le bref propter favorem dotis.

Une femme porta soun bref de dower et demanda un manier com soun dower assigné.

Herle pur[3] le tenaunt dit qu'il[4] tient fors ij. parties du manier issint qe un Robert tient le jour de soun bref purchasé l'autre[5] partie. Et dit qe en dreit de ij. parties ele ne dust accioun avoir, q'ele ne fust unqes a soun baroun[6] en leal matrimoigne acouplé. Et ceo tendi d'averrer ou il devereit.

[1] This is the Rex roll. The case is also found on the Chief Justice's roll, No. 176, m. 43. [2] *Vulg.* p. 37. Text from *A*: compared with *B*, *D*. Second part of headnote from *D*. [3] pus *A*; pur *B*, *D*. [4] *Ins.* ne *B*, *D*. [5] la iij. *B.*; la terce *D*. [6] heyr *A.*; baroun *B*, *D*.

Note from the Record (*continued*).

Richard replies that Robert had committed divers enormous trespasses against him, for which cause he had attached himself before the said Justices to sue against Robert; and that therefore, by order of the Justices, Robert was attached to answer Richard for the trespasses; and that afterwards Robert of his mere and spontaneous will made the said writing for the amendment (*emendacione*) of the trespasses, and not through any other force or duress of prison: and this he is ready to aver: and he demands judgment.

'And for that Robert cannot deny that he, being complained of (*inquerelatus*) before the said Justices at the suit of Richard for divers trespasses, was attached by command of the Justices as is aforesaid, and cannot deny that the said writing was made to Richard for the amendment of those trespasses,[1] it is considered that Richard recover against him the said debt, and damages which are taxed by the Justices at two marks (1*l.* 6*s.* 8*d.*), and Robert in mercy. And be it known that the said writing is redelivered to Richard uncancelled because other debtors are comprised in the same.'

In recording the defendant's plea both the Rex Roll and the Chief Justice's roll show an interlineation:—ita quod ipse per vim et cohercionem prisone [*interl.* et pre timore commorandi in prisona post recessum iusticiariorum illorum] fecit ei predictum scriptum.

79. ANON.

Semble that in an action of dower the tenant can plead non-tenure as to part, and as to the residue a plea in bar, *e.g.* 'never coupled in lawful wedlock.'[2]

A woman brought her writ of dower, and demanded a manor as her assigned dower.

Herle, for the tenant, said that he held only two parts of the manor, so that one Robert held the other part on the day of writ purchased. And as to the two parts she ought not (said he) to have action, for she was never joined in lawful matrimony to her husband. And this he tendered to aver where he ought.

[1] The Chief Justice's roll says merely 'And for that Robert cannot deny this.'

[2] In Maynard's Table, *Double Plee*, it is said that the plea was good.

Lauf. Vostre respounce est repugnaunt a ceo qe nous est avys, qar, si trové soit qe vous estes pleynement tenaunt de nostre demaunde, nous recoveroms la parcel dount [1] vous avez nountenure aleggé com cele q'est dowable ; et si ceste curt soit ascerté de la curt christiene qe nous ne fumes [2] unqes sa femme en leal matrimoigne,[3] donqe serroms nous barré come cele qe n'est mye dowable ; et issint serroms dowable et nent [4] dowable, q'est un inconvenient etc.

Herle aparceust [5] qu'il eust [6] malement r[espoundu] [7] en taunt qu'il dona tenaunt quant il alegga nountenure, et dit qu'il ne pout [8] respoundre [9] fors de ceo qe fust en sa tenance,[10] et en droit de ceo dit com avaunt, et tendist l'averement ou il devereit etc.

80. ANON.[11]

Cessavit, ou homme avera mye la vewe de soun cesser demene, ou dit fut qe si servicez anueles seyent relessez homme avera mye ceo bref.

Cessavit per biennium, ou le tenaunt mist avaunt relees de v. s. la ou l'autre avoit counté par homage, feauté et par les services de v. s.

Un homme porta le *cessavit per biennium* et demaunda certeinz tenementz, et counta qe la ou il tynt de luy par homage et fealté et escuage etc. et par les services de v. sous par an etc., et les queux a li etc., qe en fesant [12] les services avauntditz par ij. aunz ad cessé.

Hedon. Nous demaundoms la vewe. (Avoir ne pout, qe ceo fust soun cesser demene. Et pria eyde de ses [13] parceners. Avoir ne pout.) Et dit qu'il ne [14] pout accioun avoir, qu'il mesme avoit relessé et quiteclamé etc. Et demaunda jugement si encountre soun fait demene etc. Et bota avaunt un fait qe voleyt relès et [15] quiteclame de v. sous de rente, qe fust fait a un tiel soun auncestre etc., qi heir il est, ensemblement ove ses [16] parceneres, des queux il avoit avaunt eyde prié. Et dit qe eyde de eaux fust necessaire, purceo qe, si le fait [17] fust dedit, il ne pout estre soul partie saunt ses [18] parceneres etc.

[1] qe *D.* [2] nous fussoms *B.* [3] *Ins.* acouple *B.* [4] nent *erased D.* [5] appertent *Vulg.* [6] avoit *B, D.* [7] resceu *Vulg.* [8] poast *D.* [9] *Om.* respoundre *B.* [10] *Ins.* r[espoundre] *B.* [11] *Vulg.* p. 38. Text from *A* : compared with *B, D.* [12] faunt *A* ; fesaunt *B* ; fessant *D.* [13] ces *A.* [14] dit qe un *D.* [15] *Om.* et *A* ; *ins. B, D.* [16] ces *A.* [17] *Om.* fust *A* ; *ins.* fuist *B* ; fust *D.* [18] ces *A.*

Laufer. In our opinion your answer is repugnant to itself; for, if it be found that you are fully tenant of what we demand, we shall recover the part concerning which you have alleged non-tenure as being one who is dowable; and, if this Court be certified by the Court Christian that we never were his wife in lawful matrimony, then we shall be barred as not being dowable; and so we shall be dowable and yet non-dowable, and that is a contradiction etc.

Herle perceived that he had answered badly, in that he had named a tenant when he alleged non-tenure. And so he said that he could answer only touching that which was in his tenancy, and in respect of that he tendered to aver where he ought [what he had said before].[1]

80. ANON.

Qu. whether the *cessavit* will lie for incidents of tenure that are not periodic, *e.g.* fealty. When the tenant is charged with being the person who ceased the services, he cannot have a view. Nor can he have aid of his parceners before pleading, or after pleading a release, unless the release be denied.

A man brought the *cessavit per biennium* and demanded certain tenements and counted that, whereas [the tenant] held of him by homage, fealty, escuage etc., and by the service of five shillings a year etc., which [the tenant had done] to him etc., he [the tenant] had ceased to render the said services by the space of two years.

Hedon. We demand the view.

He could not have it, for the action was founded on his own cesser. And he then prayed aid of his parceners and was not allowed it. And he then said that [the demandant] could not have the action, for he himself had released and quitclaimed etc. And he prayed judgment whether [the demandant could bring action] against his own deed, And he put forward a deed which showed a release and quitclaim of five shillings of rent, which deed was made to such an one his ancestor. whose heir he together with his parceners is; and he said that he had prayed aid of them, and that their aid was necessary because, if the deed were denied, he could not alone and without his parceners be party [to the issue that would thus be raised].

[1] The tenant maintains his assertion, 'Never coupled in lawful marriage.' The phrase 'where he ought' is used when the question at issue will go to the ecclesiastical court.

Berr. Quant a[1] ceo vendra, donques poetz alegger ceo la,[2] qar unqore n'avetz mestier qu'il veignent en eyde.

Lauf. Unqore demourt il nostre tenaunt, qar nous avoms counté qu'il tient de nous par homage, fealté et escuage etc. Et demaundoms jugement etc.

Et al derreyn il fut chacé a respoundre au fet. Et purceo qu'il ne pout[3] dedire le fait et ne fut nent osé[4] a graunter le et[5] demorrer[6] en jugement sur ceo qe le fait[7] fit mencioun des services forsqe de la rente de v. sous, si fist il l'atourné absenter. Par quei il fust demaundé et ne vint pas. Par quei etc. et l'autre[8] sauntz jour. Et multi sunt in diversa oppinione[9] in hoc casu utrum petens per illud[10] factum esset exclusus[11] vel non. Et dicunt quidam quod istud breve non iacet nisi in casu ubi tenens tenet per servicium annuale, quod servicium ipse per factum remisit et quietum clamavit etc.

81. ANON.[12]

Reverty, ou homme avera mye counte de plus lontaine temps qe del encorounement etc.

Un homme porta soun bref de fourme de doun en le *reverti* et demaunda certeynz tenemenz, countaunt[13] de la seisine soun auncestre, qe de ceo en fust seisi en temps le Roy Richard etc.

Willyby. Il ad counté du temps le Roy Richard, le quel temps est limité en un[14] bref de dreit. Jugement, si a tiel counte en cesti bref deyve[15] estre receu.

Pass. C'est un bref en le *reverti*, en quel bref il n'y ad nul temps limité. Jugement etc.

Berr. C'est un bref de possessioun, qe ne poet avoir plus longten[16] regard qe un bref d'ael ou mortdauncestre. Par quei avys est a la partie qe a tiel counte q'est de si loyngetien temps ne deyvent respoundre.

Et sur ceo sount demorré[17] en jugement. Et au derrein le demaundaunt pria congé a departir de soun bref, *et habuit* etc.

[1] *Om.* a *B, D.* [2] allegger cella *B*; ceo la *D.* [3] *Om.* pout *D*; fait et il ne osa pas *B.* [4] ne il fuist osee *B*; et ne fut osee *D.* [5] mes *B.* [6] demora *B*; demoureront *D.* [7] *Ins.* ne *B, D.* [8] *Ins.* adieu *B, D.* [9] diversis opinionibus *B, D.* [10] aliud *A*; illud *B, D.* [11] expulsus *B, D.* [12] *Vulg.* p. 38. Text from *A*: compared with *B, D.* [13] et counta *B.* [14] *Om.* un *B, D.* [15] doyne *Vulg.* [16] longteigne *B*; lontayn *D.* [17] ceo demoure *D.*

Bereford, J. When it comes to that, then you can allege this [about your parceners]. At present you have no need of their aid.

Laufer. He still remains our tenant, for we have counted that he holds of us by homage, fealty, and escuage. We pray judgment etc.

But in the end he was driven to answer to the deed. And, because he could not deny the deed and dared not abide judgment on the point that the deed made no mention of any services except the rent of five shillings, he caused the attorney to absent himself, so that when called he did not appear. Wherefore [the demandant took nothing] and [the tenant] went without day. And men hold different opinions about this case, namely, on the question whether the demandant is barred by that deed. Some say that this writ does not lie except where the tenant holds by annual service, and the service of that kind the demandant had released and quitclaimed by deed.

81. ANON.

A writ of formedon is possessory and is subject to the same limitation of time as that which affects the mort d'ancestor.

A man brought his writ of formedon in the reverter and demanded certain tenements, counting on the seisin of his ancestor, who thereof was seised in the time of King Richard etc.

Willoughby. He has counted of the time of King Richard, which time is limited in a writ of right. Judgment, whether he can be received to such a count in this writ.

Passeley. This is a writ in the reverter, in which writ no time is limited. Judgment etc.

Bereford, J. This is a possessory writ, and it cannot have a longer time than has a writ of ael or of mort d'ancestor. Wherefore the [other party] will be well advised in not answering to a count which goes back so long a time.

And at this point they demurred in judgment. But at length the demandant prayed and had leave to depart from his writ.

82. PRIOR *v.* PARSON.[1]

Si le pleyntif demaunde la dette pur l'enlargissement de terme, le defendaunt serra receu d'averer qe avaunt qe le temps vient il fust osté, issint q'il n'avoyt receu de lès ne du graunt, contra fait qe prove le lès.

Dette par resoun de un lees, ou le defendaunt dit q'il n'avait rien receu de lees qar il fust ousté par procurement le pleintif.

Un Priour porta soun bref de dette vers un Johan persone de l'eglise etc. et demaunda x. livres etc. Et counta qe, par la ou il avoyt lessé la garde de taunt de terre etc. de la feste de Saynt Michel etc. taunqe a mesme la feste procheyn ensuaunt, ensemblement ove le mariage[2] de un tiel etc. Et bota avaunt un fait qe testmoigna soun dit.

Williby. La ou il demaunde cette dette par resoun qu'il nous lessa etc., nous vous dioms qe nous n'avoms[3] rien[4] de soun lesse, prest etc.

Malm. A ceo ne deit il avenir, qar il ad nostre[5] fait, qe testmoigne qe nous le grauntames solom ceo qe nous avoms counté. Et n'entendomps,[6] del houre qe nous serroms par nostre fait barrez a demaunder ceo qe nous luy avoms graunté, qu'il[7] pusse al averrement avenir, par la ou soun fait demene testmoigne le graunte qu'il graunta,[8] et nomement la ou il est[9] huy ceo jour seisi de la terre et[10] auxi de l'enfaunt.

Toud. Sire, nous counteroms la verité ; qe un Robert tient ceste terre de la feste de Seynt etc. taunqe etc. ; qi terme nous purchaceames de mesme celui Robert, et pus en[11] parlames si biel au Priour q'il nous graunta mesme la terre de la feste Seynt Michel etc. solom ceo qe il[12] ad counté après qe le[13] terme Robert fut accompli. Et vous dyoms qe enz ceo qe le terme Robert fut accompli si fumes enjetté,[14] et[15] par le procurement le Priour, issint qe nous n'avoms[16] nul profit de soun lees, prest etc.

Malm. Vous dites qe vous purchaceastes le terme R., donque ne vous pooms nous la corporele comprehensioun[17] de la terre lyverer,[18]

[1] *Vulg.* p. 38. Text from *A* : compared with *B*, *D*. Second headnote from *D*. [2] manier *A* ; mariage *B*, *D*. [3] navames ne navoms *D*. [4] receu *D*. [5] nous avoms vostre *B by correction* ; il ad nostre *A*,*D*. [6] *Ins.* mye *B*. [7] sil *B*, *D*. [8] le les a ly estre fet B ; le garant qil garanta (*in full*) *D*. [9] *Om.* est *A* ; *ins. B*, *D*. [10] *Om.* et *A* ; *ins. B*, *D*. [11] *Om* en *B*, *D*. [12] A. *A* ; qil *B*, *D*. [13] quele *A* ; qe le *B*, *D*. [14] ouste *B* ; eniesce *D*. [15] *Om.* et *B*. [16] navioms *B*, *D*. [17] possessioun *B* ; empression *D*. [18] deliverer *B*.

82. PRIOR *v.* PARSON.

A leased a wardship to *M* for years. *X* purchased the lease, and, while the term was running, obtained an enlargement of it from *A*, for which *X* was to pay ten pounds. This transaction was witnessed by a deed. Before the original term expired, *X* was ousted from the wardship by a stranger. *Semble* that he does not owe the ten pounds to *A*, not having got what he bargained for.[1]

A Prior brought his writ of debt against one John, parson of the church of etc., and demanded ten pounds etc. And he counted that he [the plaintiff] had leased the wardship of so much land etc. from Michaelmas etc. to the same feast next ensuing, together with the marriage [of the ward]. And he put forward a deed which witnessed what he said.

Willoughby. Whereas he demands this debt for the reason that he leased to us etc., we tell you that we had and have nothing by his lease etc.

Malberthorpe. To that [assertion] he cannot get, for he has our deed,[2] which witnesses that we granted as we said in our count; and since we are barred by our deed from demanding what we have granted to him, we do not understand that he can get to this averment, since his own deed witnesses the grant that he granted,[3] and especially since to this day he is seised of the land and of the infant as well.

Toudeby. Sir, we will plead the truth. One Robert held this land from the feast etc. until etc. And we purchased his term from him, and afterwards spoke the Prior so fair that he granted us the land from Michaelmas etc., as he has counted, after Robert's term should be accomplished. And we tell you that before Robert's term was accomplished we were ejected, and this by the Prior's procurement, so that we have no profit by his lease. Ready etc.

Malberthorpe. You say that you purchased Robert's term, so it was impossible for us to deliver to you the 'corporal comprehension'

[1] This case is Fitz., *Estoppel*, 253. His note is to the following effect: Debt; count on a lease of a wardship from one feast to another; deed produced. *Wilby:* We have nothing by your lease, ready etc. *Mal.:* To that you cannot get, for we have shown a deed. [Replication] not allowed, so issue taken on the having by his lease etc.

[2] Or 'we have your deed.' The plaintiff apparently has a counterpart of the lease.

[3] The defendant may have 'granted' that he would pay the ten pounds.

mès tauntsoulement faire un graunt et un enlargissement[1] de vostre terme; le quel graunt est testmoigné par vostre fait demene. Jugement, si a dire qe vous n'avez[2] rien de nostre lees devez estre receu, depus qe nous avoms fait qaunt qe en[3] nous est.

Willibi ad idem. S'il fut engetté par aultres, sa accioun est salvé vers ceaux qe l'engetterent.[4] Et demaundoms jugement si d'altri fait se pusse vers nous excuser, depus q'il ne poet[5] defaute en nostre persone affermer.

Berr. Quant la Persone dust avoir eu[6] estat par le graunt le Priour, il n'avoit rien. Serroit ceo[7] donques resoun qu'il dust estre en la dette condempné? (Et lour chacea[8] outre etc.)

Toud. Qe nous n'avoms rien du graunt ne de soun lees, prest etc.

Et alii econtra.

83. ANON.[9]

Intrusion, ou jeo avendra pas a bastarder le tenaunt si jeo le ay accepté com heir par purpartye faire.

Un homme porta soun bref de intrusione en le *per* et demanda certeynz tenementz etc.

Rostone.[10] Nient par abatement, enz entra après le mort etc., com coheir ensemblement ove Margerie sa parcenere, et par lour comune assent firent la purpartie entre eaux, et Margerie come parcenere la receust, prest etc.

Hedon. Come heir ne poet ele entrer, qar nous vous dioms q'ele est[11] bastard. (*Hoc non sufficiebat*, mès fut chacé outre, et dit q'ele entra par abatement, saunt ceo qe Margerie unqe come sa parcenere la receust, prest etc.)

Berr. Ore avetz assetz dit et plus qe mestier ne serroit.

Et ex hoc nota qe si ele entra come fille[12] ove sa parcenere et fust r[eceu] com parcenere, tot fust ele bastarde, tiel entré n'est mye abatement.[13]

[1] alargissement *B*; *sim. D.* [2] navietz *B.* [3] a *B*, *D.* [4] engetta *A*; engett' *B.* [5] fuist *Vulg.*; puist *B.* [6] *Om.* eu *D.* [7] *Om.* ceo *B*, *D.* [8] charga *A*; chacea *B*; chaca *D.* [9] *Vulg.* p. 39. Text from *A*: compared with *B*, *D.* [10] Raust. *B.* [11] fuist *B*; fu *D.* [12] fitz et heir *A*; file *B*; fille *D.* [13] *Add* par qi etc. ut patet hic etc. *B.* *Add* ut patet hic *D.*

of the land. We could only make a grant to you and an enlargement of your term. That grant is witnessed by your own deed. Judgment, whether you ought to be received to say that you have nothing by our lease, since we have done all that in us lies.

Willoughby to the same effect. If he was ejected by others, he has his action against those who ejected him. Judgment, whether against us he can excuse himself by reason of another person's act, since he cannot allege any default in our person.

Bereford, J. When the Parson ought to have had an estate by the grant of the Prior, he had nothing. Would it, then, be reason that he should be condemned in a debt etc.? (And he drove them to another answer.)

Toudeby. We have nothing by his grant or his lease. Ready etc. Issue joined.[1]

83. ANON.

If two have entered as coheirs and have made partition, the one cannot afterwards be heard to say that the other is bastard.

A man brought his writ of intrusion in the *per*, and demanded certain tenements etc.

Roston. [The tenant] entered not by abatement but after the death [mentioned in the writ] and as coheir with Margery her parcener,[2] and by their common assent they made partition, and Margery received her as a parcener.

Hedon. As heir she could not enter, for we tell you that she is bastard. (But that would not suffice, and he was driven further and said that the tenant entered by abatement without Margery having received her as a parcener. Ready etc.)

Bereford, J. Now you have said enough, and more than was needful.

And so note that if she entered as daughter and heir with her parcener and was received as parcener, that entry is no abatement although she was bastard.

[1] One of the marginal notes supposes the defendant to have been ejected by the plaintiff's procurement. This, however, does not seem to be admitted, nor apparently is issue taken thereon.

[2] Margery we may suppose to be the demandant's mother, unless indeed she is the *homme* who now demands. This case is Fitz., *Bastardy*, 19.

84. ANON.[1]

Replegiari, ou jeo n'avera mye eyde de cely qe ad estat a terme de vye la ou il avowe pur homage. Ou piert qe tendre et prest a paier abate l'avowerie s'il seit averé ou conu.

Replegiari, ou l'avowerie fuist fait pur homage, ou le pleintif pria eide de soun joint feffé et fuist oustee pur ceo qe le prié n'avoit qe terme de vie.

Un Robert se pleynt qe un Gilbert de Synaweyn[2] a tort prist sa vache. Et furent l'un et l'autre partie en court par atorné.

Roston avowa la prise sur Robert et Mabille sa femme com de le[3] comune dreit et pur le homage Robert arere etc.

Lauf. dit pur Robert q'il n'avoit[4] en ceaux tenementz sy noun joynt ove William, sauntz qi il ne poet ceste choce menere en jugement, et prie aide etc. (Et fust ousté etc.,[5] purceo qe l'avowrie si chaist tauntsolment pur[6] homage arere, a qi celuy, de qi il prie en eyde,[7] ne poet estre partie, tot fust il en court, purceo qu'il n'avoyt sy noun terme de vie.)

Lauf. A tiel[8] avowrie ne deit il estre receu, qe Robert dit qu'il luy tendist sovent soun homage, issint qe ceo n'est mye sa defaute sy soun[9] homage soit arere, scil. en presence[10] A. et B. etc. Jugement etc.

Roston. Ceo n'est mye assez, saunt ceo qu'il ne fust ore prest a fair homage. Jugement.

Berr. Il se excuse[11] en ij. maners; qar Robert vous dit qe ceo n'est mye sa defaute de ceo que Gilbert n'est meynt jour passé seisi de soun homage; et qaunt a ore Robert est auxi prest a faire com Gilbert a rescevoir.

Roston. Qu'il ne nous tendy unqes soun homage, prest etc.

Lauf. Le revers.

Et le quel de eaux ij. scil. de Gilbert ou de Robert eust esté en court en propre persone eust eu avauntage, qar, si Gilbert y fust sauncz ceo qe Robert eust esté[12] preist a faire homage, Gilbert eust eu retorn, et si Robert y fust et Gilbert nent, Robert eust eu sa vache quites ove ses[13] damages etc.

[1] *Vulg.* p. 39. Text from *A*: compared with *B*, *D*. Second headnote from *B*. [2] Semaweryn *B*; Seynawen' *D*. [3] lour *B*, *D*. [4] *Ins.* rien *B*. [5] ouste del eide *D*. [6] sour *B*, *D*. [7] pria aide *B*; *sim. D*. [8] cel *B*. [9] noun *A*; soun *B*, *D*. [10] *Om.* en presence *A*; *ins. B*, *D*. [11] acuse *B*; accuse *D*. [12] qe R. ne fuist *B*; *sim. D*. [13] ces *A*.

84. ANON.

Replevin. Avowry for homage. Aid of a joint feoffee who holds only for life is refused. If the avowant is in court by attorney, a plea that homage has been tendered is good without the addition that the plaintiff is now ready to do homage. Otherwise if the avowant is personally present.

One Robert complained that one Gilbert of Semaweryn wrongfully took a cow of his; and both parties were in court by attorney.

Roston avowed the taking upon Robert and Mabel his wife as of their common right, and for the homage of Robert which was arrear etc.

Laufer said for Robert that he had nothing in those tenements except jointly with William, and that without him he could not bring this matter into judgment; and he prayed aid etc. (His prayer was refused because the avowry fell wholly upon homage arrear, and to this the person whose aid he prayed could not be a party even if he were in court, for he had nothing except for term of life.)

Laufer. To this avowry he ought not to be received, for Robert says that he often tendered him his homage, so that it is not his [Robert's] fault if his homage be arrear. And of this he offers witnesses, to wit A. and B. etc. Judgment etc.

Roston. That is not enough. He must add that he is ready to do homage now. Judgment.

Bereford, J. He excuses himself in two ways, for he tells you that it is not his fault that Gilbert was not seised of his homage many a day before now, and, as to the present time, Robert is as willing to do it as is Gilbert to receive it.

Roston. He never tendered us his homage. Ready etc.

Laufer. The contrary.

And whichever of those two, Gilbert and Robert, had been in court in proper person would have had the advantage, for if Gilbert had been there without Robert being there ready to do his homage, he Gilbert would have had a return [of the beast]; and if Robert had been there and Gilbert had not, Robert would have had his cow quit together with his damages.

85. ANON.[1]

Detenue d'un escrit, ou piert qe si jeo demaunde escrit d'aultri baile a cely qe fraunctenement jeo suppose chargé devers ly, il respoundra mye sauncz fait qe prove le baile.

Un Robert de K. porta soun bref vers William de C. etc. et counta q'a tort ne luy rendy un escrit, qe voleyt qe mesme cesti William graunta a mesme cesti Robert un aunueltie de xx. s. a tot la vie mesme cesti Robert, et obliga certeynz tenementz etc. quel houre qe l'aunuelté fut arere etc.; issint qe une Margerie meir Robert taunt com il fust dedenz age bailla mesme l'escrit au dit William a rendre au mesme cesti Robert quel houre q'il le vodera et saveroit[2] demaunder; par quei Robert[3] est sovent venuz a mesme cesti William[4] et[5] luy ad prié etc.

Lauf. defendy et demaunda ceo q'il avoyt du baille.

Herle. Siwte etc.

Lauf. Il demaunde un escrit d'altri bail, jugement si sauntz especialté deyve[6] estre r[espoundu].

Herle. Vous deissit bien si nous mesmes vous eusoms baillé etc.; mez ore vous dioms qe M. nostre miere vous bailla a rendre a nous,[7] par quei etc. Et d'altrepart, graunt duresce serroit si nous fussoms barré de l'aunuelté par la necgligence de nostre miere, purceo[8] q'ele ne sout[9] especialté[10] demaunder, la quele n'est mye en nostre persone punysable de droit. Jugement etc.

Ascunes[11] disoint, tot fust issint qe William ne fust nyent celuy qe graunta estre tenu en la aunuelté, qu'il ne respoundreit nient de aultri bail sauntz especialté etc., et par moult plus fort ou il est mesme celuy qe dust avoir graunté etc. et chargé ces[12] tenementz a la destresse; la quel charge est encountre comune dreit, saunz ceo qe homme ne eust especialté etc.

Lauf. William est mesme[13] celuy qe dust avoir graunté l'aunuelté a Robert; par quei, s'il fust chacé a respoundre par la ou Robert n'ad sy noun vent,[14] et par la ou l'especialté qu'il bye a[15] recoverir est en chargaunt soun fraunctenement, si serroyt le fraunktenement

[1] *Vulg.* p. 39. Text from *A*: compared with *B*, *D*. [2] plerra *B*. [3] *Om.* Robert *B*. [4] *Om.* William *B*. [5] *Om.* et *A*; *ins. B*, *D*. [6] doyne *Vulg.* [7] vous *Vulg.* [8] de ceo *B*, *D*. [9] vout *B*. [10] lespecialte *B*. [11] Et plusurs *B*; Chescuns *D*. [12] ses *D*. [13] nest mie *B*. [14] veut *Vulg.* [15] *Om.* a *B*, *D*.

85. ANON.

If *A* has bailed to *B* a charter to be delivered to *C* on *C*'s demand, it is doubtful whether *C* can sue *B* for its delivery, unless he can produce a specialty witnessing the bailment. *Semble* that he cannot do this if the charter is one by which *B*'s freehold is charged.

One Robert of K. brought his writ against William of C. etc., and counted that wrongfully he has not rendered to him a writing which stated that William granted to Robert an annuity of twenty shillings for his [Robert's] whole life and bound certain tenements [to distraint] in case the annuity were arrear etc. And the count said that one Margery, mother of Robert, while he was under age, bailed this writing to William to render it to Robert whenever Robert should be able and willing to demand it; and that Robert had often come to the said William and had prayed him etc.

Laufer defended and asked what he had to show the bailment.

Herle. Suit etc.

Laufer. He demands a writing on the bailment made by another. Judgment, if he can be received to this without specialty.

Herle. You would say well if we ourselves had made the bailment;[1] but here we tell you that our mother bailed to you to render to us. Wherefore etc. Moreover, it would be great hardship if we were barred from the annuity by the negligence of our mother because she did not think of demanding a specialty—a negligence which by law should not be punished in our person. Judgment etc.

Some said that, even if William were not the person who granted the annuity, he would not without specialty have to answer to the bailment made by a person other [than the plaintiff]; and they argued, *a multo fortiori*, that he need not do so where he is the person who is alleged to have granted the annuity and to have charged his tenements with the payment, since such a charge is against common right unless there be specialty.

Laufer. William is the very man who is supposed to have granted the annuity to Robert, and if [William] be driven to answer where Robert has nothing but wind, and the specialty which [Robert] is striving to recover is one that charges [William's] freehold, then

[1] Apparently this supposes that the charter is one by which the bailee has charged his freehold in favour of the bailor.

William chargé de chose qe soune en frauncténement par vent,[1] qe n'est mye suffrable de ley. Jugement etc.

Et a dereyn *Herle* pria congé a departir de soun bref, *et habuit.* Et ideo caveat decetero unusquisque[2] quod non tradat factum huiusmodi[3] custodiendum sine facto quod traditionem testatur. Teste isto placito etc.

86. ANON.[4]

Ou cele qe fust receu a defendre son dreit rendy par fyn.

Un tenaunt a terme de vie fust enpledé et fist defaute,[5] par quei qe[6] les tenementz furent a perdre. Et vient une femme et dit qe la reversioun de memes les tenementz fut[7] appendunt a luy, et pria d'estre receu etc. Et fust receu,[8] et rendi al demaundant sa demaunde.

Berr.[9] Qi dorra au Roy les deners etc. ?

Hedon aleggea la poverté de la femme etc.

87. PEYTYN *v.* CHAPELEYN.[10]

Fyn levé.

Johan de Chapeley[11] et Johanne[12] de M. conissent les tenementz en le bref continuz estre le dreit William Peytyn[13] com ceo qe W. R. et C. ount de lour doun. Et pour cel reconissaunce W. R. et C. grauntent mesmes les tenementz a Johan[14] et a Johanne et as heirs Johanne[15] et ceo lour rendent en ceste curt a tenir du chief seignour du fee par les services qe as tenementz appendent a toux jours.

Pass. Quel estat en ont R. et C. ? *Hunt.* Terme de vie.

Berr. Donqe il peirt[16] qaunt il n'ount[17] qe a terme de lour ij. vies qu'il[18] ne poent[19] les tenementz en fee graunter.

Toud. Si pount mout bien ensemblement ove W. Petyn, a qi le dreit est conu.

Berr. Jeo vei bien qe la choce ne poet estre altrement.

Et fust receu etc.

[1] veut *Vulg.* [2] *Om.* unusquisque *B.* [3] huius *Vulg.* [4] *Vulg.* p. 39. Text from *A* : compared with *B*, *D.* [5] *Ins.* apres defaute *B*, *D.* [6] *Om.* qe *D.* [7] *Om.* fut *A* ; fuist *D.* [8] *Om.* receu *A* ; *ins. B.* [9] Herle *B*, *D.* [10] *Vulg.* p. 39. Text from *A* : compared with *B*, *D.* [11] le Chapelein *B* ; *sim. D.* [12] Johan *B.* [13] Potyn *B*, *D.* [14] W. *B.* [15] *Om.* et as heirs Johanne *A* ; *ins.* et as heirs Jone *B* ; *sim. D.* [16] *Ins.* qe *B*, *D.* [17] il ount *B*, *D.* [18] qe un *B*, *D.* [19] puist mie *B* ; poet my *D.*

William's freehold will be subjected to a freehold charge by mere wind, and this the law will not suffer etc.

And in the end *Herle* prayed leave to depart from his writ. And this was granted him. Therefore for the future let every one beware not to hand over a deed of this kind for safe custody without [taking] a deed which testifies the delivery:—As witness this case, etc.

86. ANON.

A reversioner, after being received to defend, renders the tenement by way of fine.

A tenant for term of life was impleaded and made default after default, so that the tenements were on the point of being lost. A woman intervened and said that the reversion of the tenements belonged to her, and she prayed to be received etc. And she was received and rendered to the demandant his demand.

Bereford, J. Who will pay the money to the King, etc.? [1]

Hedon alleged the woman's poverty.

87. PEYTYN *v.* CHAPELEYN.

Fine. Tenant for life and reversioner join in the grant.

John le Chapeleyn and Joan of M. made conusance that the tenements contained in the writ [2] were the right of William Peytyn as being that which W., R., and C. have of their gift. And for this conusance W., R., and C. granted the tenements to John and Joan and the heirs of Joan and rendered the same to them in this court, to hold for ever of the chief lord of the fee by the services pertaining to the same tenements.

Passeley. What estate have R. and C.? *Hunt.* Term of life.

Bereford, J. It appears then that, as they have only for the term of their two lives, they cannot grant the tenements in fee.

Toudeby. Yes, they can well do so along with W. Peytyn, who, as the conusance testifies, has the right.

Bereford, J. Well, I see that it cannot be done otherwise.

[The proposed fine] was received.

[1] The fine for leave to accord.

[2] A writ brought in order that a fine may be levied.

88. LATIMER *v.* WALTON.[1]

Replegiari, ou la dame clama chemyn en le soil l'avowaunt saunz mustrer especialté ou apendaunce.

Une dame se pleynt qe un William a tort prist un chyval etc.

Pass. avowa etc. et dit qe William trova le chyval treaunt une carecte[2] par my ses bleez et en mangaunt et en defolaunt ses[3] bleez; et issint prist il en damage fesaunt com bien luy lust.

Herle. Nous vous dioms qe la dame ad soun manier en mesme la ville ou la prise etc., issint qe le leu ou la prise[4] fust fait si est le[5] chemyn la dame a carier ses[6] bleez et soun feyn, et dount ele ad esté seisi tot soun temps a carier etc. et soun piere avaunt luy et soun ael et soun besael. Jugement etc.

Pass. Nous dyoms qe le soyl est le nostre, et ceo n'ount il nient dedit, et del houre qu'il ne poent alegger prescripcioun du temps, ne ne moustre[7] especialté par unt qu'il pussent cel chemyn user, jugement si cel possessioun qu'il alleggent ilor[8] pusse estat doner, et depus qe nous ne pooms nous mesmes par altre voie descharger.

Berr. Donque poetz dire qe ceo n'est mye chemyn de dreit.

Pass. Et nous le voloms.

Herle. Qe ceo est le chemyn la dame de dreit, prest etc.

Pass. Le revers etc.

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 176), r. 207, Bed.

Alice, sometime wife of William le Latimer, brings an action of replevin against Robert of Wauton for taking a horse. The deed was done on [3 Sept. 1308] Tuesday next before the feast of the Nativity of B. Mary in 2 Edw. II. in the vill of Eaton ('Etone') in a place called the Lauedieffelde: the damages are laid at 40*s*.

Robert avows the taking, for that he found the horse in a cart crossing his land and trampling down his corn and herbage.

Alice says that Robert cannot avow the taking as lawful, for she has her way (*habet chyminum suum*) in the said place, and she and her father and grandfather (whose heir she is) have had their way there with wagons and carts (*cum carris et carrettis*) for carrying their corn, hay, dung, and all other things at their will to their manor in the said vill: and this she is ready to aver: so she demands judgment. (*Note continued on the opposite page.*)

[1] *Vulg.* p. 40. Text from *A*: compared with *B*, *D*. [2] charette *B*, *D*. [3] ces *A*. [4] *Ins.* se *A*. [5] *Om.* le *B*, *D*. [6] ces *A*. [7] temps ne moustrer *B*; ne ne moustrer *D*. [8] lour *B*, *D*.

88. LATIMER *v.* WALTON.

In answer to an avowry a way over the *locus in quo* may, without prescription or specialty, be claimed as having been enjoyed 'of right' by the plaintiff.

A lady complained that one William wrongfully took a horse etc.

Passeley avowed etc. And (said he) William found the horse drawing a cart through his corn and eating and trampling his corn, and so took him damage feasant, as well he might.

Herle. We tell you that the lady has her manor in the same vill where the taking [was made], so that the place where the taking was made is the lady's road to carry her corn and her hay, and thereof she has been seised all her time by carrying etc., and her father before her, and her grandfather and great-grandfather. Judgment etc.

Passeley. We tell you that the soil is ours, and this they have not denied, and, since they cannot allege prescription of time or show specialty for the use of the road, and since we cannot discharge ourselves by any other way,[1] we demand judgment whether the possession which they allege can give them an estate.

Bereford, J. Then you can say that this is not a way of right.

Passeley. Yes, we will do that.

Herle. The lady's way of right. Ready etc.

Passeley said the contrary.

Note from the Record (*continued*).

Robert says that neither Alice nor her said ancestors had nor were wont to have their way as of right in the said place without being distrained (*divadiati*), unless this were by the licence of Robert or his ancestors: and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Michaelmas. It is to be noted that in the defendant's replication the words *suum de iure* are interlined: dicit quod predicta Alicia nec antecessores sui predicti habuerunt nec habere consueverunt chiminum [suum de iure] in loco predicto. This seems to suggest that the main part of the replication was already upon the roll before Bereford made the remark which is ascribed to him by the reporter.

[1] These last words seem to mean that a caption of the plaintiff's beasts was our one way of disburdening our land of the alleged easement.

89. ANON.[1]

Un homme porta le *precipe in capite*, en quel bref il n'avoit mye en le perclos compris 'queritur,' mès voleyt 'unde predicti tales ei deforciant,' et il y avoint plusours 'precipes.' Et pur ceo qe le bref ne fust nyent de forme en taunt qe le 'queritur' defaillit, si fust agardé le bref malveys, et qe la partie alast a Dieu sauntz jour etc.

90. ANON.[2]

Fourme de doun, ou piert qe si il eyt reversioun et après un taile cely put rien demaunder par le taile qar l'un esteint l'altre; et nul ne covent mye nomer touz ceux en la taile s'il ne atendent estat. Forma doni en le *remanere*, ou l'especialté volleit une reversioun et le bref nent, et pur ceo fuist chalengié etc., et auxi fuist chalengié de omissioun etc.

Un Roggier porta soun bref de fourme de doun en le *remanere* vers un G. et demaunda certeyn tenementz, et counta qe un Symound de ceo en fust seisi et dona etc. a Johan et a les heyrs de soun corps engendrez, et, si Johan deviast sauntz heyr de soun corps etc., qe mesmes les tenementz remeyndreient a un Robert et ses[3] heirs etc., et les queux après la mort Johan a l'avauntdit Roggier friere et heir deyvent remeyndre par la forme de doun etc.

Pass. defendy et demaunda cel qu'il avoit de la forme etc.

Herle mist avaunt un fait, qe voleyt qe Symound dona mesme les tenementz a Johan soun fitz et a les heirs de soun corps engendrés, et, s'il devyast sauntz heyr de soun corps, qe mesmes les tenementz dussent revertir a Symound et a Maude[4] sa femme a terme de lour ij. vies, et qe après lour decès remeyndreient a Robert et a ses[5] heirs a touz jours.

Pass. Roggier q'ore demaunde n'est mye celuy a qi la forme primerement se[6] tailla en le remeyndre, enz un Robert friere Roggier, qi heyr Roggier se fait.[7] Et desicome le bref ne veot mye qe Robert

[1] Not in *Vulg.* Text from *A*: compared with *D*. [2] *Vulg.* p. 40. Text from *A*: compared with *B*, *D*. Second part of headnote from *B*. [3] ces *A*. [4] Mahaude *B*. [5] ces *A*. [6] *Om.* se *A*, *D*. [7] fit *D*.

89. ANON.

A man brought the *precipe in capite*, and in the closing phrase of the writ there was no 'queritur,' but 'unde predicti tales ei deforciant.'[1] And there were divers 'precipes.' And the writ was adjudged bad as not being in proper form, inasmuch as 'queritur' was wanting, and the [other] party was bidden adieu without day etc.

90. ANON.

There can be no remainder after a reversion, and therefore *semble* that if *A* gives land to *B* in tail with 'reversion' to *A* and his wife for their lives, and then with remainder to *C* in fee tail, *C* takes nothing. Discussion of the forms of writs and counts appropriate to formedon in the remainder.

One Roger brought his writ of formedon in the remainder against one G. and demanded certain tenements, and counted that one Simon was seised thereof and gave etc. to John and the heirs of his body begotten, and if John should die without an heir of his body etc. the tenements should remain to one R[obert] and his heirs etc.; and [he further counted that] the said tenements after the death of John ought to remain to the said Roger, brother and heir of Robert by the form of the gift etc.

Passeley defended and asked what [Roger] had to show this form [of gift].

Herle put forward a deed which said that Simon gave the same tenements to John his son and the heirs of his body begotten, and that if he died without an heir of his body the said tenements should revert[2] to Simon and Maud his wife for the term of their two lives, and after their decease should remain to R[obert] and his heirs for ever.

Passeley. Roger, the now demandant, is not the person to whom the form of the gift in remainder is 'tailed'[3] in the first instance. That person was Roger's brother, one Robert, whose heir Roger

[1] The correct form was 'et unde queritur quod predicti . . . deforciant.'

[2] Observe the term 'revert.' The case turns upon it.

[3] The verb *tailler* is used in the wide sense in which we use 'to limit.' A remainder is 'tailed' (carved out), even though it be not a remainder in tail.

est mort, jugement du bref; qar la ou le bref dit 'et les queux après la mort Johan [1] a Roggier frere et heir Robert remeyndre doivent,' la duist le bref dire 'et les queux après la mort Johan et Robert a Rogier frere etc.' Et d'altrepart la ou le heyr demaunde il covent qe soun bref dye qe toux iceaux qe sount partie avaunt ly a la taille soient morts, jugement etc.

Herle. En cas il covent et en cas ne mye: qe la ou l'auncestre [2] ne atend [3] estat il ne covent mye qe le bref le dye. (Et posuit exemplum etc.) Et sic ex parte ista. Robert nostre auncestre ne attendi unqes estat. Par qei etc. Et d'aultrepart, assetz est Robert supposé mort par nostre bref, depus qe le bref fet Roggier soun heir.

Berr. dit qe le bref en cel poynt si fust assez bon.

Friss. ad variacionem. Sire, ceo est un bref en le *remanere* qe deit a la taille acorder; mès l'especialté si voet un reversioun et le bref ne voet nul. Jugement de la variaunce.

Toud. ad idem.[4] Le bref voet purceo qe Johan devya sauntz heir de sei qe les tenementz [5] remeyndreient a Robert et a ses [6] heirs [7] et hoc *immediate*, et l'especiauté veot *mediate*. Jugement etc.

Williby. Posoms qe tenementz soyent donez a un homme et a les heirs de soun corps engendrez,[8] et, s'il devye saunz heir de soun etc., qe mesmes les tenementz remeynent a un aultre et a les heirs de soun corps engendrez, issint qe la forme taillast a plusours en le remeyndre, par quei qe le derreyn qe fust issint taillé eust porté bref en le *remanere*, il ne fra mencioun de nully, si noun de celluy qe primes fust partie a la taille, et entrelessera [9] toutz les aultres. Auxint de ceste part.

Herle. Il chalangent nostre bref purceo qu'il ne fait mencioun de revers [10], mès le revers [11] et le remeyndre ne poent ensemblement estre en un bref, qe l'en [12] ne poet [13] trover nul [14] tiel bref en la chauncelerie. Par quei etc. Et d'aultrepart, si nous fussoms ousté de ceste bref, nous serroms barrés a toutz jours, qe serroit duresce, ou nous ne poums aultre bref trover. Jugement etc.

[1] *Om. to after next* Johan *A*: *supplied from B, D.* [2] lautre *B.* [3] attent *B.* [4] diem *Vulg.* [5] *Ins.* a *A*; *om. B, D.* [6] ces *A.* [7] *Om.* heirs *A*; *ins. B, D.* [8] *Om. to after next* engendrez *B.* [9] entrelessa *D.* [10] reversioun *B, D.* [11] reversioun *B, D.* [12] lem *B, D.* [13] *Ins.* nent *D.* [14] un *D.*

professes to be. And since the writ does not say that Robert is dead, we demand judgment of the writ. And whereas the writ says 'and which after the death of John ought to remain to Roger, brother and heir of Robert,' it ought to say 'and which after the deaths of John and Robert [ought to remain] to Roger.' And, when an heir is demanding, his writ ought to say that all those who are party and are in front of him in the 'tail' are dead. Therefore we demand judgment etc.

Herle. That is so in some cases, but not in others; for where an ancestor does not live to acquire[1] an estate, it is not right that the writ should state [his death]. (And he put an example.) And so in this case: Robert did not live to acquire an estate. Wherefore etc. Besides, our writ sufficiently supposes Robert's death, for it speaks of Roger as his heir,

Bereford, J., said that in this point the writ was good enough.

Friskeney (on the question of variance). Sir, this is a writ in the remainder which ought to accord with the 'tail.' But the specialty speaks of a reversion and the writ says nothing about it. Judgment on this variance.

Toudeby (to the same purpose). The writ says 'for that John died without an heir *de se* the tenements should remain to [Roger] and his heirs:' and it thus supposes that they should remain to him immediately, and the specialty shows that [they can only come to him] mediately [after the deaths of Simon and Maud]. Judgment etc.

Willoughby. Put case that tenements be given to a man and the heirs of his body begotten, and, should he die without an heir [of his body], they are to remain to another and the heirs of his body begotten, so that the form [of the gift] is 'tailed' to several persons in remainder. And [suppose that] the last of those to whom it has thus been 'tailed' brought a writ [of formedon] in the remainder. [In the case thus put] he shall make mention of no one but of him who was made the first party to the 'tail,' and shall leave out all the others. So in this case.

Herle. They challenge our writ because it makes no mention of the reversion; but reversion and remainder cannot stand together in one writ, for one can find no such writ in the Chancery. Wherefore etc. And again, if we were ousted from this writ, we should be barred for ever, which would be a hardship, since no other writ can we find. Judgment etc.

[1] Literally, 'does not attend,' or 'wait for': that is, does not live long enough to acquire.

Berr. Si la forme fust[1] taillé encountre ley, entendez vous estre eydé par bref q'est doné de ley (*quasi diceret non*) ?

Herle.[2] Ceo n'est mye encountre ley.

Berr.[3] Si est, qar tenementz qe sount donetz en fee taillé qaunt il sount retournez al donour si est chescun manere de taille esteint. Coment vodrez donqe après par mye la taille rien demaunder ?

Herle. Sire, il n'y ad aultre debat sy noun un estat qe Symoun reserva a luy et a Maude sa femme a terme de lour ij.[4] vies si Johan deviast saunz heir de sey,[5] et qe après lour decès qe mesmes les tenementz a nous remeyndreient. Et del houre qe Symoun et Maude sount mortz, il me semble qe nous devoms par cesti bref[6] estre eydé.

Et sic ad iudicium si del houre qe reversioun[7] y fust reservé si rien pout estre demaundé par my la forme. Et *Berr.* dit privement qe poy acrestre[8] a Maude la femme Symoun[9] par my tiel retourn etc.

91. CRESSY *v.* SPALDING (PRIOR OF).[10]

Nota qe le derrein present est bon response en un *quare impedit* et e contra, sicut patebat[11] inter Hugonem de Cressci et Priorem de Spaldynge, inter quos ista duo brevia simul et semel pendebant, et responcio unius sufficiebat alteri.

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 177), m. 85 d., Linc.[12]

The Prior of Spalding was summoned to answer Hugh de Cressy in a plea that he permit him to present a proper parson to the church of Surfleet ('Surflet'). The count states that one William of Braytoft was seised of the manor of Surfleet, to which the advowson of the said church belongs, in the time of King John, and from him the manor with the advowson descended to one John his son and heir; and that this John was within age and in the wardship of his mother Alice; and that she, by reason of the nonage of John, who was in her wardship, presented in the time of King John one Renger her clerk, who on her presentation was admitted and instituted;

[1] seit *D.* [2] *Om.* this remark, *B*, *D.* [3] *Om.* this remark, *B*, *D.* [4] *Om.* ij. *B*, *D.* [5] de soun corps etc. *B*, *D.* [6] *Ins.* de lei *B*, *D.* [7] rien *B*; retorn *D.* [8] acrest' *B*; accrest *D.* [9] la femme sy noun *A*; la femme S. *B*; la feme Symoun *D*; la feme scilicet *Vulg.* [10] *Vulg.* p. 40. Text from *A*: compared with *B*, *D.* [11] patebit *B.* [12] This is the Rex roll. The case is also on the Chief Justice's roll, No. 176, m. 207.

BEREFORD, J. If the form [of the gift] were 'tailed' in a manner not allowed by law, do you think to be aided by a writ which is given by law? (He implied that this could not be.)

Herle. But this is not contrary to law.

BEREFORD, J. Yes, it is; for if tenements which are given in fee tail have returned to the giver, then every kind of 'tail' is extinct. How then can you afterwards demand anything by means of the 'tail'?

Herle. Sir, there is nothing in debate except an estate which Simon reserved to himself and Maud his wife in case John died without an heir *de se*, and after their decease the tenements were to remain to us: and, since Simon and Maud are dead, it seems to me that we ought to be aided by this writ.

And so the case stood for judgment whether after the reservation of a reversion there could be [any further limitation on which a demand could be based]. And BEREFORD said in private that little accrued to Maud the wife of Simon by means of this return [or 'reversion.'][1]

91. CRESSY *v.* SPALDING (PRIOR OF).

Note that a darein presentment is a good answer in a *quare impedit*, and the converse also is true, as appeared in a case between Hugh de Cressy and the Prior of Spalding, between whom these two writs were pending at one and the same time, and an answer [given] in the one was sufficient in the other.

Note from the Record (*continued*).

and that on his death the church is now vacant; and that from John the manor with the advowson descended to one Sibil as daughter and heir, and from Sibil to one William as son and heir; and that William gave the manor with the advowson to Hugh of Cressy (the plaintiff); and that he is seised of the manor to which the advowson belongs; and that therefore it belongs to him to present; and that the Prior impedes him, to his damage of 200*l.*

The Prior pleads that he has arramed here an assize of last presentation against Hugh to find what patron in time of peace presented the last parson who is dead to the said church; and that it belongs to him to present and not to Hugh; for he says that one John sometime Prior of Spalding, his predecessor, presented in the time of King Henry III. one Antony[2] of Beke, his clerk, who on his presentation was admitted and instituted; and that

[1] The tenements were Simon's, so they could not be made to 'revert' to Maud.
[2] *On some occasions* Antoninus.

Note from the Record (*continued*).

John of Pecham, then Archbishop of Canterbury, in his visitation in that diocese found that Antony held divers (*plura*) benefices without a dispensation and was not ordained within the year.

The Prior's plea goes on to say that therefore the Archbishop deprived Antony and collated the church to Adam of Rouceby, his clerk, in the time of Edward I., because the advowson belonged to the said men of religion (*eo quod predicta advocacio ad ipsos religiosos viros pertinuit*);[1] and that by his (Adam's) death the church is now vacant; and that on an earlier vacation the said John, sometime Prior, presented one Robert Burnel his clerk in the time of Henry III.; and that on an earlier vacation one Simon, sometime Prior of Spalding, presented one William of Walesby his clerk in the time of Henry III.; and this he is ready to aver by the assize.

Hugh replies that, as the Prior has arramed the said assize against him, he is ready to hear the verdict (*recognitionem*) of the said assize. (*Note continued on opposite page.*)

92. UMFRAVILLE *v.* HACCOMBE.[2]

Garde, ou piert qe homme purra voucher, et serra osté du voucher s'il soy abati primer après la mort le piere.

Nota qe Johan[3] d'Umfraville porta soun bref de garde vers Estevene de Haccome et demaunda le corps[4] Johan de Cheverston. Et Estevene dit q'il n'avoit rien ne ne clama en le corps sy noun du graunt Piers etc., et le voucha par eyde de la court a garauntie.

Hunt. Voucher par eyde de la curt ne poet, qe vous fustes le premir qe happa l'enfaunt après la mort nostre[5] tenaunt, issint qe Piers, q'est vouché, n'avoit rien en le corps ne unqes de ceo ne fust seisi tauntqe a nostre bref purchasé, prest etc.

Herle vit[6] qu'yl n'avereyt[7] eyde de la court a faire venir Piers etc.

Et al derreyn Piers vynt de gree et entra en la garrauntye et dona chief respouns etc.

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 177), r. 106 d, Devon.[8]

Stephen of Haccumbe was summoned to answer John de Umfraville in a plea that he render to the demandant John, son and heir of John of Chevereston, whose wardship belongs to the demandant. The demandant in his count

[1] They were clerical patrons and yet presented a disqualified person; so they lose a turn. [2] *Vulg.* p. 40. Text from *A*: compared with *B*, *D*. [3] Rogier *B*; Johan *D*. [4] *Ins.* del heir *D*. [5] le *D*. [6] dit *Vulg.* [7] avoit *B*; navoit *D*. [8] This is the Rex roll for this term. The Chief Justice's roll (No. 176) has this case (m. 243), but is damaged.

Note from the Record (*continued*).

An order is made that the assize be taken, but it is respited until the octave of Trinity for default of jurors, as none have come. Then a *postea* states how a verdict was taken. It is found that in the time of Henry III. Prior Simon as true patron presented William of Walesby, and that on his death Prior John as true patron presented Robert Burnel, and that on his resignation Prior John presented Antony de Beck in the time of Edward I., and that afterwards John of Peccham, then archbishop, in his visitation found that Antony was disqualified (*inhabilem*) and deprived him of the church and collated it to Adam of Rouceby, by whose death it is now vacant. Asked by the justices when the vacancy began,[1] the jurors say at the octave of Hilary last past. The Prior recovers his presentation and is to have a writ to the bishop and sixty marks for damages.

92. UMFRAVILLE *v.* HACCOMBE.

In a writ of wardship the Court will not aid the tenant to vouch if it is alleged that he was the first to obtain possession of the infant after the ancestor's death.

Note that John of Umfraville brought his writ of wardship against Stephen of Haccombe and demanded the body of John of Cheverston. Stephen said that he had nothing and claimed nothing in the body save by the grant of Peter, and by aid of the Court vouched him in court to warranty.

Huntingdon. You cannot vouch by aid of the Court, for you were the first to 'hap' the infant after the death of our tenant, so that Peter, who is vouched, had nothing in the body and never was seised of it until after the purchase of our writ. Ready etc.

Herle saw that he would not have aid of the Court to make Peter come etc.

In the end Peter came without compulsion, entered into the warranty and gave an answer in chief etc.

Note from the Record (*continued*).

states that the wardship belongs to him, because John of Chevereston held of him a messuage and three carucates of land in Wrey and Lotterford and Lywedene by homage and fealty and the service of the fee of half a knight, to wit, twenty shillings to a scutage of forty shillings and so in proportion;

[1] On the answer to this question depends the amount of damages: Stat. Westm. II. (13 Edw. I.) c. 5.

Note from the Record (*continued*).

and that he, the demandant, was seised of these services by the hand of John, father of the said heir; and that this John died in his homage; and that Stephen unlawfully deforces him, to his damage of 100*l.*

Stephen says that he holds the wardship by the demise of Peter Corbet, whom he vouches to warranty. Peter is present in court and warrants gratis, and says that the wardship belongs to him and not to the demandant; for he says that the ancestors of the said heir held the manor of Thurleston of Peter and his ancestors by military service before they held the said tenements in

93. ANON.[1]

Nota qe rendre en dower[2] ne excusera mye le tenaunt des damages, mès covient par *Berr.* qu'il fust prest a[3] rendre einz ceo qe nul plee y fust mewe.[4]

94. ANON.[5]

Descendere, ou drein seisi abaty le bref.

Nota une Margerie porta soun bref de fourme de doun en le *descendere* et se fist fille et heyr a un William, a qi les tenementz furent donetz etc.

Pass. Cesti bref est doné en lewe de mortdauncestre, qe voet estre porté de la mort de dereyn seisi;[6] et vous dioms q'après la mort William si entra cesti femme q'ore demaunde ensemblement ove Johanne et Margerie ses[7] seors com fille et un heir William, et la pourpartie fait entre eux.

Et purceo qe la femme ne poet[8] ceo dedire le bref se abati.[9]

95. ANON.[10]

De carta reddenda, ou el dit qe le fesour avoit decyré la chartre et q'il avoyt pendaunt un bref vers ly etc., et fust ajourné et maundé d'enquere s'il avoyt etc.

Un homme porta soun[11] bref *de carta reddenda* vers une Alice. La quele respoundy et dit qe celuy qe fist la chartre la fist entender

[1] *Vulg.* p. 40. Text from *A*: compared with *B*, *D*. [2] *Om.* en dower *B*; rendre douwer *D*. [3] qe y fust a *D*. [4] mue *B*, *D*; come *Vulg.* [5] *Vulg.* p. 41. Text from *A*: compared with *B*, *D*. [6] qe voet de dereyn seisi estre porte *D*. [7] ces *A*. [8] poeit *D*. [9] dedire etc. si fuist agarde qe le bref sabatist *B*. [10] *Vulg.* p. 41. Text from *A*: compared with *B*, *D*. [11] soul *D*.

Note from the Record (*continued*).

Wrey etc. by military service of the demandant or his ancestors; and this he is ready to aver.

The demandant says that the ancestors of the heir held the said messuage and three carucates in the said vills by military service of the demandant and his ancestors before they held the manor of Thurleston by military service of Peter or his ancestor; and he prays that this be inquired by the country. Issue is joined, and a *venire facias* is awarded for a month after Michaelmas.[1]

93. ANON.

Note that a render in dower will not excuse the tenant from the damages, but [*per* BEREFORD, J.] it behoves him to show that he was ready to render before plea was moved.

94. ANON.

A writ of formedon in the descender is abatable by a plea of 'last seisin.'

Note one Margery brought her writ of formedon in the descender and made herself daughter and heir to one William to whom the tenements were given etc.

Passeley. This writ is given in the place of a mort d'ancestor which should be brought on the death of the person who was last seised. And we tell you that after William's death the now demandant entered along with her sisters, Joan and Margery, as the daughters and the one heir of William, and they made partition among them.

And as the woman could not deny this, the writ was abated.[2]

95. ANON.

An action of detinue of charter is adjourned because the defendant alleges that she is bringing an action of trespass against a person who destroyed the charter.

A man brought a writ for the return of a charter against one Alice. She answered and said that he who made the charter gave

[1] This case is Fitz., *Counterple de voucher*, 99.

[2] If the issue in tail has been seised, then a formedon is not the appropriate action.

qu'il avoyt graunt mestier de veere [1] la chartre et pria d'avoir la vewe. Alice luy graunta. Qaunt il la avoyt entre mayns, la decera [2] et la getta en la bowe.[3] Meyntenaunt A. leva la mené etc. et siwy vers luy [4] devaunt le corps le Roy par un bref de trespas. Le quel plee est unqore pendaunt. Et pria avisement de court q'ele ne fust chargé de ceo plee pendaunt l'autre. Dount les justices l'enjournerent [5] a la quynzeyne de la Trinité d'oyr soun jugement et endementeres enquerent [6] s'yl y [7] avoit tiel plee en baunk le Roy ou noun.

96. ANON.[8]

Nota de *cui in vita* ou les tenemenz furent donez en fraunc mariage et le bref fust chalengé pur ceo qe le bref dit 'ius et maritagium suum' et ne dit 'de dono talis etc.' Et le bref agardé bon.

Nota q'en un *cui in vita* 'quod clamat esse ius et maritagium suum' ou le demaundaunt counta qe ceo fust soun dreit et soun mariage dil doun un L. etc.

Clav. Le bref ne voet fors 'ius et maritagium suum,' et il ount counté qe ceo fust lour dreit et lour mariage du doun un L. etc. Jugement de la variaunce.

Berr. S'il eyent servy lour bref et eient en countaunt dit plus com en certaunt [9] la curt de lour estat, par taunt ne poetz assigner variaunce.

Clav. Jugement du bref, qe en chescun *cui in vita* si covent qe le demaundaunt se [10] face tittle com a dire 'quod clamat esse ius et hereditatem' vel 'ius suum de dono talis,' mès il ne se [11] fet tittle en soun bref ne par descent,[12] ne par doun de nully, coment il est avenuz. Par quei etc.

Berr. Vous deisset bien si les tenementz furent donetz en fee taillé ou en fee symple, mès en ceo cas il [13] ne se fra jammès altre tittle, qe ceo est soun dreit demene.

Et stetit breve etc.[14]

[1] davoir *B*; a veer *D*. [2] desira *Vulg.*, *B*; descira *D*. [3] vewe *Vulg.*; bouwe *B*. [4] sour lui *B*. [5] lenjourna *A*; la ajourner' *B*. [6] enquerront *B*, *D*. [7] lui *D*. [8] *Vulg.* p. 41. Text from *A*: compared with *B*, *D*. Headnote from *B*. [9] plus etc. affermant etc. et ascertant *B*; plus come en ascertant *D*. [10] *Om.* se *D*. [11] *Om.* se *B*, *D*. [12] title *B*; descent *A*, *D*. [13] ele *B*, *D*. [14] *Om.* breve etc. *B*.

her to understand that he had great need to see it, and prayed her to let him see it; so she complied, and when he had the charter in his hands he tore it up and threw it in the mud; whereupon Alice raised the hue etc. and sued him in the King's Bench [1] by a writ of trespass, and the plea is still pending; and she prayed the opinion of the Court whether she should be charged with this plea while the other was pending. And the Justices adjourned her to the quindene of Trinity to hear her judgment, and in the meantime they made inquiry whether there was such a plea in the King's Bench or not.

96. ANON.

In a writ of entry *cui in vita* it is sufficient to say 'which she claims as her right and marriage portion,' without naming the donor of the estate.

Note. In a *cui in vita* where the writ said 'which she claims to be her right and her marriage portion,' the demandant counted that [the tenements in demand] were her right and her marriage portion by the gift of one L.

Clav. The writ only says 'which she claims as her right and her marriage portion,' and they have counted that it was their right and marriage portion by the gift of one L. Judgment on the variance.

Bereford, J. If they have kept to their writ and in counting have said somewhat more by way of certifying the Court as to their estate, you cannot assign that as a variance.

Clav. Judgment of the writ, for in every *cui in vita* it behoves the defendant to make a title, as, for example, to say 'which she claims as her right and inheritance,' or 'which she claims as her right by the gift of so and so;' but here she makes no title in her writ, neither by descent nor by any one's gift, so as to show how she came by [the tenements]. Wherefore etc.

Bereford, J. What you say would be true if the tenements were given in fee tail or in fee simple; but in this case she shall never [be driven to] make any other title [by way of showing] that it is her right.[2]

And the writ stood.

[1] Literally 'before the body of the King:' that is, in the Court in which the King is in person.

[2] See the writs in Reg. Brev. Orig. f. 232 b. For another version of this case see Appendix II., p. 196.

97A. FITZ PAIN *v.* POUNCET.[1]

Eschete, ou il fust mye receu a bastarder un par my qy le tenaunt fist le resort, pur ceo q'il entra cum heir et morust seisi après la mort soun piere.

Eschete pour ceo qe soun tenaunt morust saunz heir, ou dit fuist q'il y avoit saunc en quel saunc fuist alleggé bastardie.

Robert le Fitz Payn porta soun bref d'eschete vers une Cristyene etc. et demaunda certeynz tenementz, par la resoun qe un Johan tient de Robert soun piere[2] les tenementz etc., et les queux a luy deyvent etc. pur ceo qe l'avauntdit Johan morust sauntz heyr etc.

Friss. Ceo ne poet dire, qar nous vous dyoms qe de Johan resorti etc. a un Robert com a cosyn et heir, friere William, piere Nychol, piere Johan. De Robert descendy etc.[3] a un Aufrey[4] com fitz etc. Et de Aufrey a Johan, qe survesqui etc. Et demaundoms jugement du bref.

Herle.[5] Vous pernetz vostre r[espouns] du temps qe Johan morust. R[espone]z si Johan survesqui et s'il entra en etc.

Friss.[6] Johan survesqui et entra.

Herle rehercea *ut supra* fesaunt le resort par my Nychol.[7] Nous dyoms qe de Nychol a Robert rien ne poet resortir,[8] qar Nychol fust bastard etc.

Friss. A ceo ne devez avenir, qar William piere Nychol morust seisi de ceaux tenementz, après qi mort Nichol entra com fitz et heir et continua xx. aunz et morust seisi etc. Après qi mort Johan entra, de qui seisine etc. Et demaundoms jugement si a tiel excepcioun[9] etc.

Herle. Nous pledoms a la bastardie et vous pledet al entré de la tenaunce. Et nous voloms averrir qe Johan morust saunz heir etc.

Friss. ut supra.

Herle. Cristyene est estraunge, en quy bouche ne gist allegger la continuaunce de possessioun encountre la[10] bastardie. Mès si ele fust privé ele porreit donqe dire et alegger continuaunce de heir en

[1] *Vulg.* p. 42. Text from *A*: compared with *B*, *D*. Second headnote from *B*. [2] tyent de lui *B*. [3] qar nous vous dyoms qe ili avoit un Robert cosin Jon frere William pere Nichol piere Jon de Robert de qi seisine *B*, *and here the plea ends, the rest being cancelled.* [4] *Or* Aufrey *A*, *D*. [5] *Om.* this speech, *Vulg.* Cancelled *B*. [6] *Om.* this speech, *Vulg.* Cancelled *B*. [7] *Ins.* etc. *B*, *D*. [8] dyoms qe par Nich. ne puist il fere resorter *B*. [9] examination *Vulg.* [10] *Om.* alegger . . la *B*, *D*.

97A. FITZ PAIN *v.* POUNCET.[1]

On the death of *X* the lord claims an escheat in default of an heir. The tenant, who is not related to *X* by blood, pleads that *X* left as his heir *Z*, a second cousin on his father's side. The lord replies that *X's* father *Y* was a bastard. The tenant rejoins that *Y* entered as heir and was seised until his death. *Semble* that this is a good rejoinder.

Robert Fitz Pain brought a writ of escheat against Christina etc. and demanded certain tenements for the reason that William No. 2 held them of Robert, the demandant's father, and that they ought to revert to the demandant, as William No. 2 died without an heir etc.

Friskeney. That you cannot say, for we tell you that from William No. 2 the right resorted to one Robert No. 1 as cousin and heir, he being brother of William No. 1, who was father of Nicholas, who was father of William No. 2. And from Robert No. 1 the right descended to one Alfred as his son and heir, and from Alfred to Robert No. 2, who outlived William No. 2. Judgment of the writ.

Herle. You take your title from the death of William No. 2. Answer whether Robert No. 2 outlived him and entered etc.

Friskeney. He survived and entered.

Herle rehearsed the count which made a resort from Nicholas to Robert No. 1. And (said he) we tell you that from Nicholas to Robert nothing could resort, for Nicholas was bastard.

Friskeney. To that you cannot get, for William [No. 1] father of Nicholas died seised of these tenements, and on his death Nicholas entered as son and heir and continued for twenty years and died seised etc., and on his death entered William [No. 2], upon whose seisin [you claim]; and we demand judgment whether [you can be received] to such a plea etc.

Herle. We plead to the bastardy, and you plead to the entry into the tenancy; and we will aver that William [No. 2] died without an heir.

Friskeney repeated what he had said.

Herle. Christina is a stranger, and it does not lie in her mouth to allege continuance of possession against [our assertion of] bastardy. If she were privy, then she might allege continuance of possession

[1] Proper names from the record. In the reports the pedigree does not appear very plainly, and by giving the true names we run some risk of distorting the argument. This case is Fitz., *Bastardy*, 20.

heir. Et demaundoms jugement, depus qe le saunk fourche et ele[1] estraunge.

Scot. Nous sumes[2] privé a la tenaunce, et a nous est a defendre nos tenementz. Et d'altrepart, jeo pose qe Robert q'ore se pleynt[3] fust entré ceaux tenementz com par voye d'eschette, et qe Johan, qe nous dioms avoir[4] survesqui,[5] porta[6] soun bref de cosynage de la mort cely Johan[7] de qi seisine etc., il ne girra[8] mye en sa bouche etc. De[9] mount[10] plus fort issi etc.

Berr. La ou vous estes a defaire lynage en la persone Johan pur ceo qe Johan morust etc., la se aforcent[11] il de meintenir[12] lynage pus la mort Johan. Et demaunda outre[13] si après ceo qe Nichol fust entré après le decès William soun piere et devya seisi si Robert pout avoir usé bref d'eschete.

Il graunterent[14] qe si.

Pass. Donqes sumes en mesme le cas qaunt nous portames ore nostre bref de la seisine Johan, la ou nous dussoms en aultre cas porter nostre bref de la seisine Nichol.

Scot. Mès vostre tittle est divers en l'un et en l'autre ; qe, si vous eussez porté vostre bref de la mort Nichol, il convendreit qe ceo fust purceo qe Nichol morust sauntz heir de sey. Mès ore vous pernetz vostre tittle de ceo qe Johan morust sauntz heir etc., et de ceo avoms prové le reverse.

Toud. En le cas ou nous sumes vous ne serrez jamès resceu de bastarder Nichol, sauntz ceo qe vous ne dites qe Nichol entra etc. et ne mye com soun[15] heir du saunk.

West. Nous pernoms nostre accioun en le dreit de la seisine Johan, et de ceo q'il morust sauntz heir de sey etc. Et il ne mostrent[16] rien a defair cest accioun, q'est en le dreit, fors de un entré[17] etc., le quel entré[18] nous ne grauntoms mye, et qe n'est fors a la possessioun, qe n'est[19] barre a defair accioun[20] q'est si haut, qe il[21] poet estre, qe R.[22] entra com nous ne grauntoms mye et[23] qe[24] nous fumes[25] denz age. Par quei il semble etc.

Berr. Ceo respouns chiet[26] a chescun maniere de[27] bref etc.

[1] *Ins.* est *B, D.* [2] *Om.* sumes *A* ; *ins. B, D.* [3] *Om.* qore se pleynt *A, D* ; *interl. B.* [4] *Om.* avoir *D.* [5] Jon qe ore est demaundant *B.* [6] portast *B.* [7] Robert *B over erasure* ; Johan *D.* [8] girreist *B.* [9] ne *B.* [10] moult *D.* [11] senforcent *B* ; se afforceont *D.* [12] il mayntenant *D.* [13] et ddm' jug' *A* ; et dda outre *B, D.* [14] J. graunter' *A* ; il granteront *D* ; il grauntirent *B.* [15] *Om.* soun *B, D.* [16] moustre *B.* [17] dun autre *B.* [18] entre *erased B.* [19] *Ins.* pas *B, D.* [20] *Ins.* et *B, D.* [21] *Om.* il *B.* [22] Nich. *B, D.* [23] *Om.* et *D.* [24] mie taunque *B.* [25] sumes *Vulg.* ; fumes *A, B, D.* [26] gist *B, D.* [27] *Om.* de *B.*

from heir to heir. Since, however, there is a change of blood [1] and she is a stranger, we demand judgment.

Scotre. We are privy to the tenancy, and it is for us to defend our tenements. Moreover, I put case that the demandant had entered on these tenements by way of escheat, and that Robert No. 2, whom we allege to have outlived William No. 2, had brought a writ of cosinage on the death of William No. 2, upon whose seisin you demand, then it would not have lain in his [the present demandant's] mouth [to allege the bastardy] and *a multo fortiori* [he cannot allege it as demandant].

Bereford, J. Whereas you are to show that the lineage came to an end in the person of William No. 2, for that he died [without an heir], they desire to maintain the lineage after his death. And he [Bereford] asked whether, if Nicholas had entered after the death of William No. 1 his father and had died seised, the now demandant could have used a writ of escheat.

[The tenant's counsel] conceded that he could.

Passeley. Then we are in the same case when we bring our writ on the seisin of William No. 2 as that in which we should have been if we had brought our writ on the seisin of Nicholas.

Scotre. But your title is different in the one case from what it is in the other; for, if you had brought your writ on the seisin of Nicholas, that would have been because Nicholas died without an heir *de se*; but here you found your title on the death of William No. 2 without an heir [of any sort]; and we have proved the contrary of this.

Toudeby. In the case in which we are you will never be received to bastardise Nicholas, unless you say that Nicholas entered etc. 'and not as heir in blood.'

Westcote. We take our action in right of the seisin of William No. 2, in that he died without an heir *de se*; and they show nothing to defeat our action, which is in the right, save an entry etc.; this entry we do not concede, but it makes only to the matter of possession and is no bar to defeat our action, which is of a higher nature; for it may be that [Nicholas] entered—we do not admit it—and that we were under age. Therefore it seems etc.

Bereford, J. This answer [2] lies in every kind of writ etc.

[1] Literally 'the blood forks,' or 'is divided.'

[2] Namely, so it would seem, the plea that the person whom a demandant would bastardise entered as heir and continued seised until his death.

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Precipe Johanni de C. quod iuste etc. reddat C. x. acras terre cum pertinenciis in F. quas Johannes de K. de eo tenuit et que ad ipsum C.[2] reverti debent tanquam escaeta sua eo quod predictus etc. obiit sine herede de se ut dicit etc.[3]

Fris. La ou il porte cesti bref et dit q'il morust sanz heir, nous vous dioms q'il avoit un cosigne Robert par noun, frere Thomas, piere N., piere Johan, de qi seisine etc.

Herle. Par my N. ne put il ceo resort fere, qar il fut bastard, prest etc.

Fris. Ceo ne put il dire qar T. ael Johan de qi seisine etc. de ceux morust seisi, après qi mort N. entra com fitz et heir, out et tynt[4] et morust seisi etc. Jugement, si[5] bastarder le poez.

Herle. Vous estez estrange purchasour et nent de sang Nichol, sicom vous mesmes avez supposé par vostre bref, et vous n'averez mye le avantage com[6] avereit le heir de sang. Jugement si vous, q'estes estrange purchasour, pussez cel excepcion joyer.

Scot. Nous pledoms a la[7] fauce matere; qe, la ou vous supposez par vostre bref qe Johan morust sanz heir, nous vous dioms qe noun *racione predicta*; la quele excepcion est auxi avant doné a[8] estrange com a[9] privez.

Scrop. Si Robert[10] cosigne Johan, de qi seisine etc., a qi ceo resort est fet, fut ore einz et l'accion fut ore usé vers lui, il se pout ayder par deux resons.[11] La une est q'il est heir de sang: l'autre est q'il est einz et vestu de[12] la possession com heir. Et si l'estat N. fut en debat, cum[13] ore est, et alleggé fut countre lui q'il fut bastard, proprement serroit il en sa bouche[14] a dire qe celui N. entra en ceux tenementz après la mort T. son pere et[15] out et tynt tute sa vie et morust seisi; par qi après sa mort ne put estre bastardé. Mès ore vous faut la une braunche et l'autre, qar vous n'estes[16] pas de sang heir ne einz vestue[17] de la possession, einz estez estrange. Par

[1] Text from *M*: compared with *P*. [2] R. *M*. [3] En un bref de eschete pur ceo qe le tenaunt morust saunz heir, debet reverti *P*, *instead of all that precedes*. [4] *Ins.* tote sa vie *P*. [5] *Ins.* ore *P*. [6] *Ins.* qe *P*. [7] *Om.* la *P*. [8] gist auxi bien pur *P*. [9] pur *P*. [10] Roger *M*; R. *P*. [11] voies *P*. [12] en *P*. [13] qe *M*; cum *P*. [14] en sa bouche girreyt proprement *P*. [15] qe *M*; et *P*. [16] qar nest *M*. [17] ne vestu *P*.

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Command Christina that justly etc. she render to Robert Fitz Pain certain tenements that William No. 2 held of him, and which ought to revert to him as his escheat, because William No. 2 died without an heir (so he says) etc.

Friskeney. Whereas he brings this writ because William No. 2 died without an heir, we tell you that there was one Robert his cousin, brother of William No. 1, who was father of Nicholas, who was father of the [William] upon whose seisin this demand is made.

Herle. By means of Nicholas he can make no resort, for Nicholas was bastard.

Friskeney. That you cannot say, for the grandfather of this tenant died seised, and after his death Nicholas entered as son and heir, and had and held all his life, and died seised. Judgment, whether you now can bastardise him.

Herle. You are a stranger and purchaser and not of the blood of Nicholas, as you yourself admit in your answer; and you shall not have the advantage that an heir of the blood would have. Judgment, whether you, who are stranger and purchaser, can take this exception.

Scotre. [You would force us to] plead to false matter; for, whereas you suppose that William No. 2 died without an heir, we tell you that he did not, for the reason aforesaid; and this exception can be taken as well by a stranger as by a privy.

Scrope, J. If [Robert No. 2], the cousin of the man [William No. 2] upon whose seisin this action is brought, were now 'in,' he might aid himself in two ways. First, by saying that he is heir by blood. Second, by saying that he is 'in' and is vested with the possession as heir. And then, if the estate of Nicholas were in debate (as now it is) and the bastardy [of Nicholas] were alleged against [Robert No. 2], then it would rightly lie in his mouth to say that Nicholas entered on the death of his [Nicholas's] father and had and held all his life and died seised, so that after his death he cannot be bastardised. But in this case each of these branches fails you, for neither are you the heir of blood nor [as heir] are you 'in' and vested with the possession, for you are a stranger. Therefore it seems that

[1] See the headnote to the preceding report and the subsequent note from the record.

qi il semble qe par une possession continué par celui a qui vous n'estez [1] rien privé de sang,[2] ne devez avantage prendre.

Fris. Cest accion est doné en defaute de sang a qi nous lui avoms respondu etc. *ut supra.*

Ber. Si Nichol eust devié seisi de ceux tenementz sanz heirs de son corps, avereit [3] le chief seignur (*quasi diceret sic*) ? Pur ceo q'il fut bastard. *Per consequens* resort par my lui ne put estre fet.[4]

Scot. Del hure q'il entra après la mort T. com fitz et heir,[5] out et tynt,[6] n'entendoms mye qe par cele entré et continuaunce de sang costeyn avereit il [7] son bref de cosinage de sa mort. Estre ceo, l'accion q'est usé par bref de eschete de la seisine le bastard est usé par plus especial paroles [8] qe l'accion q'est usé par cest bref; qe le bref dit 'quod ad ipsum reverti debet eo quod predictus J.[9] obiit sine herede de se' [10] etc.; et [11] ceste parole 'obiit sine herede de se' [12] est si general qe, si homme pout moustrer ascun goutte [13] de sang a qi [14] heritage [15] pout descendre, l'accion ne vaut rien, la quele chose nous avoms [16] moustré *ut supra.*

Ing. Si ceste resort eust esté fet al uncle J., scil. al frere N., n'avereit homme mye bon respons a dire q'il ne pout resort fere purceo qe N. fut bastard ? Si avereit, purceo [17] qe le sang N. fut interrupt; et *per consequens* resort par my son sang ne put estre fet.

Toud. Si ceux tenemenz eussent esté le purchaz Nichol, vostre excepcion [18] liereit mult fort. Mès del hure q'il entra com fitz et heir après le mort T. son pere et morust seisi sanz estre clamé [19] en sa vie,[20] ore a dire q'il est bastard ne avendrez vous mye; qar, si celui qe nasquit avant esposailles, q'est purement par [21] ley de terre bastard, eust entré etc. et devié seisi, jeo averey descente en son sang s'il eit heir de son corps, et si la descente lui defaille [22] jeo averey resort en le sang paramount, issint qe après sa mort il ne serra bastardé.

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 102 d, Dors.

Robert, son of Robert 'fiz Paen,' demands against Christina, sometime wife of John of Ponsonde,[23] a messuage and two virgates of land in Wynter-

[1] *Ins.* de *P.* [2] *Om.* de sang *P.* [3] navereit *P.* [4] *Om.* Pur ceo . . . fet. *P.* Pur ceo . . . bastard *should precede* quasi . . . sic. [5] *Ins.* et *P.* [6] *Ins.* cum fiz et heir *P.* [7] nous semble qe par tiel entre et continuaunce le saunk costeyn avereit *P.* [8] plusours paroles especiales *P.* [9] F. *M.* [10] *Om.* de se *P.* [11] *Om.* et *M.* [12] *Om.* de se *P.* [13] nule gent *P.* [14] *Ins.* le *P.* [15] *Ins.* ne *M*; *om. P.* [16] pussoms *P.* [17] avereyt *P*; averez *M.* [18] respounse *P.* [19] reclame *P.* [20] *Ins.* et *M.* [21] de *P.* [22] si heir de corps defaut *P.* [23] 'Feudal Aids,' vol. ii., p. 31 (A.D. 1303): 'Johannes Pouncet [al. Ponset] tenet in eadem villa [Wynterborn S. Martini] dimidium feodum de Roberto filio Pagani.'

you can take no advantage by a continuance of possession on the part of one to whom you are in no wise privy.

Friskeney. This action is given when there is a default of blood, and about that point we have given him our answer.

Bereford, J. If Nicholas had died seised of these tenements without an heir of his body, would not the chief lord have had an action? Yes, if Nicholas was bastard. So no 'resort' can be made through him.

Scotre. Since [Nicholas] entered on the tenements after the death of [his father] as son and heir, and had and held as son and heir, it seems to us that by this entry and continuance the collateral blood would have an action of cosinage on his death. Moreover, the action by writ of escheat on the seisin of a bastard makes use of certain special words which are not used in this writ, for [this] writ says 'which ought to revert to him because the said William died without an heir,'[1] and those words 'without an heir' are so general that if one can show any one drop of the blood to which the right can descend, the action fails. And this we can show.

Ing. If this 'resort' had been made to an uncle of [William No. 2] and a brother of Nicholas, would it not be a good answer that there could be no such 'resort,' for Nicholas was a bastard? Yes, it would, for the blood of Nicholas was interrupted, and so no 'resort' can be made by means of his blood.

Toudeby. Had Nicholas acquired these tenements by purchase, your answer would be much to the point. But, since he entered as son and heir on his father's death without being challenged as a bastard in his lifetime, you shall not now get to bastardise him; for if a man who is born before the marriage of his parents, and who by the law of the land is a mere bastard, entered and died seised, I shall have a descent in his blood if he has an heir of his body, and, if he has none, I shall have a 'resort' to the blood higher up, so that after his death he shall not be bastardised.

Note from the Record (*continued*).

burne St. Martin's which William of Ponsonde held of Robert fiz Paen, father of the demandant, whose heir he is, and which ought to revert to the demandant as his escheat because William died without an heir. The count states that William held of Robert the father by homage, fealty, and the

[1] The writ of escheat on the death of a bastard tenant ran 'eo quod predictus X bastardus fuit et obiit sine herede de se.' The other writ had merely 'eo quod predictus X obiit sine herede.' See Reg. Brev. Orig. 164 b.

Note from the Record (*continued*).

service of a fifth part of a knight's fee; and that of these services Robert the father was seised as of fee and right in the time of Edward I.; and that William died seised of the tenements in the homage and seisin of Robert the father; and that the right descended from Robert the father to the demandant as son and heir.

The tenant Christina says that William did not die without an heir. For she says that on his death the right resorted to one Robert, brother of one William, father of one Nicholas, father of the William upon whose seisin the action is brought, as cousin and heir; and that from Robert it descended to one Alfred as son and heir, and from him to one Robert as son and heir; and that this Robert outlived William, and on William's death entered the tenements as cousin and heir; and she demands judgment.

The demandant replies that William died without an heir. For he says that no right could resort to Robert, brother of the first William the grand-

98A. DE LA MORE *v.* THWING.[1]

Replegiari des levereres pris en garenne ou l'avowerie fut fet sur parcener par cely qe clama garenne com purchasour dil estat de l'autre parcener, qe ne fut pas chacé de moustrer especialté de garenne, mès alegga prescripcioun; ou fut ben pledé qe prescripcioun ne chaunge mie estat de parcenerie mès seisine l'un est seisine l'autre.

Replegiari ou l'avouaunt awoua sur le pleintif qe fuist soun parcener par resoun qe il trova un leverer coraunt en soun garrein et avoit tué un conin.

Un A. porta soun replegiari vers Marmeduk de Twenk de soun leverer atort pris.

Kent[2] avowe etc. purceo qe Sire M. trova le leverer coraunt en soun[3] boys, q'est garreine, et avoyt tué un conynge[4] et issint pur damage etc.

Hedon. Vous avowetz par reson qe vous avietz garreine. Moustre a la curt etc.[5]

Herle. Seisi etc. Et d'aultrepart, nous ne sumes mye icy en un *quo warranto* a moustrer par quel tittle etc.

Malm. Garreine est une[6] choce qe n'est mye[7] comune, mès chiet en especialté, et vous ne moustretz nul qe lie[8] par resoun de seygnourie etc. a la court etc.

[1] *Vulg.* p. 42. Text from *A*: compared with *B*, *D*, *L*, *R*. The version in *L*, *R* is intermediate between 98A and 98B. First headnote from *Q*; second from *B*. [2] Herle *B*, *D*; Rostoun *L*. [3] un *B*. [4] avoit pris vij. conynges *L*. [5] moustrez qe vous avez gareyne *L*. [6] Cest une *B*. [7] nest pas de lei *B*. [8] moustretz mye qe vous leietz *B*; *sim. D*.

Note from the Record (*continued*).

father, by means of Nicholas father of the William on whose seisin the action is brought, because Nicholas was a bastard; and this he is ready to aver as the Court shall award; and he demands judgment.

The tenant says that the demandant cannot be admitted to bastardise Nicholas. For she says that Nicholas on the death of William the grandfather, who died seised in his demesne as of fee, entered the tenements as son and heir of the same William, and held them all his life, and died seised thereof; and that on his death the William upon whose seisin this action is brought succeeded to Nicholas in the tenements as son and heir; and this she is ready to aver by the country; and she prays judgment.

The demandant says that Nicholas did not succeed to the said William his father in the said tenements as son and heir, for he says that the said tenements were the purchase of Nicholas (*fuerunt perquisitum predicti Nicholai*);[1] and he prays that this be inquired by the country.

Issue is joined and a *venire facias* is awarded for the morrow of Martinmas.

98A. DE LA MORE *v.* THWING.[2]

On the death of *A* a manor comprising a wood descends to sisters. One sister's share passes by descents and feoffments to *B*. Another share descends to *C*. The wood remains unpartitioned. *B* takes a hound of *C* coursing in the wood. *Semble* that if *A* died before time of memory, *B* may be able to justify the capture by prescribing for a right of warren exclusive of the holders of the other shares.

Robert de la More brought his replevin against Marmaduke of Thwing for wrongfully taking his greyhound.

Herle avowed etc. for that Marmaduke found the greyhound coursing in his wood, which is warrened, and it had killed a cony, and so he took it damage feasant.

Hedon. You avow for the reason that you have warren. Show to the Court [what you have to prove this warren].

Herle. Seised etc. Moreover, we are not now in a *quo waranto* where title must be shown, etc.

Malberthorpe. Warren is a thing which is not [of] common [right], but lies in specialty, and you do not show to the Court that you have it by way of a seignory or otherwise.

[1] Apparently the effect of the discussion reported in the Year Book was to convince the demandant's counsel that they could not succeed if Nicholas entered as son and heir: so they change their tactics and assert that Nicholas was a purchaser.

[2] Proper names from the record. The reader who desires to understand this difficult case is advised to begin by reading our note from the record. This case is Fitz., *Distresse*, 20; but the only point noted is the capture of the dog damage feasant.

Herle. Qaunt nous avoms [1] taunt pledé qe la court nous demaunde etc., nous moustroms volunters. Mès vous n'avetz rien etc. par ou [2] il convendreit etc.

Malm. Sire, nous dioms qe [3] le boys ou etc. est lour [4] comune boys *tenta* [5] *pro indiviso.* [6] Et demaundoms jugement s'il pusse garreiene soul clamer.[7]

Herle. Sire, nous dioms qe Sir M. est seisi du manier etc., denz quel manier ceo boys est compris. Et vous dioms qe Sire M. ad esté seisi tot soun temps de garreine, et soun feffour devaunt luy, et ses [8] auncestres [9] du temps dount memorie etc. Et demaundoms jugement etc.

Friss. Ceo ne poetz dire, qe le manier avauntdit fust en la seisine A. De A. purceo [10] q'il morust sauncz heir de sey [11] descent a Alice, Murriel et a Anna [12] etc. come seors etc.; et l'estat qu'il ad si est de purchace de celuy qe avoyt la pourpartie Muriel [13] etc. {Et Muriel de sa pourpartie enfeffa un Marenduk le quel Marenduk enfeffa cesti Mareduk qu'ore avowe.}[14] De A. descent a cesti A. q'ore se pleynt, et la pourpartie Anna il acrocha, de qui [15] nous avoms vers luy bref [16] pendaunt etc.[17] Et demaundoms jugement si, del hore q'il n'ad fors estat de parcener, si sur nous qe sumes prevez et parceners du saunk pusse etc.[18]

Herle. Vous avetz dit qe nous sumes estraunge etc.; et, desicome vous ne dites rien a defair nostre tittle qe lye si haut, demaundoms jugement etc.

{*Herle.*[19] Vous avez conu qe nous sumes estraunge purchasour et nyent privé du saunk et rien ne distes a defere nostre title ne le usage qe est si haut,[20] et desicom vostre estat est de plus bas et nous aleggoms usage encontre vostre estat si haut et de chose qe nous tenoms en comune, jugement.}

Friss. L'estat qe nous clamoms si est a defair vostre tittle, qe ne lye mye sur nous qe avoms owel estat ovesqe vous; et ceo qe allegget

[1] eyoms *B, D.* [2] ount *B.* [3] Malm. et les [autres] isseint denparler, revindrent et diseynt qe *R.* [4] nostre *B.* [5] tanto *A.* [6] tote pro indiviso *D*; boys pro indiviso *B, L.* [7] garr' soun clam' *A*; si sur nous qe sumes parceners puisse gareine clamer *R*; *sim. L.* [8] ces *A.* [9] et le auncestre son feffour *L.* [10] la seisine A. agarr' de A. purceo *A*; la seisine A. ou la garr. de A. pur ceo etc. *B*; en la seisine un Aunstone en garenne et purceo qe Aunstone *L*; la seisine A. en garene *D.* [11] *Om.* qil . . . sey *B, D.* [12] Amice *Vulg.*; Agnes *L.* [13] Alice *B.* [14] *Instead of* et lestat . . . Muriel etc. *L.* [15] quei *B.* [16] *Ins.* si einz *L.* [17] *Ins.* a demander la meyte *R.* [18] jugement desicum il est comoner ovesqe nous si de chose tenuz en comone pusse sur nous avowerie faire *R*; jugement desicom il nest qe nostre comuner en cel boys par reson qil ad lestat nostre parcener pusse tiel avowerie fere *L.* [19] From *L* instead of last speech. [20] si aut' jugement *L.*

Herle.[1] When we have pleaded so far that the Court demands [our title], we will gladly show it; but you have [as yet said] nothing which would make it needful [for us to show our title to you].

Malberthorpe and the others went out to imparl and returned and said: Sir, we say that the wood where [the capture was made] is the common wood of [the plaintiff and the avowant], held in undivided shares, and we demand judgment whether he can claim warren.

Herle. Sir, we tell you that Sir Marmaduke is seised of the manor etc. and that this wood is comprised in the manor, and we say that he has been seised of warren all his time and his feoffor before him and [his feoffor's] ancestors from time immemorial; and we demand judgment etc.

Friskeney. That you cannot say, for the manor was in the seisin of one Duncan and was warrened, and on the death of Duncan, because he died without heirs of his body, it descended to Emma, Helewise, and Muriel etc. as sisters etc.; and the estate that [Marmaduke] has is by purchase from a person who had Emma's share; and the share of Muriel descended to the plaintiff; and [Marmaduke] 'accroached' Helewise's share, and for a moiety of that share we have a writ pending against him etc.; and we demand judgment, since he has nothing but a parcener's share, whether he [can make this avowry] upon us who are privies and parceners in the blood.

Herle. You have said that we are a stranger etc.; and since you have said nothing to defeat our title, which we have laid at so high a point, we demand judgment etc.

{*Herle.*[2] You have confessed that we are stranger and purchaser and are not privy in blood, and you say nothing to defeat our title and the usage which stands so high up. And since your estate is lower down and we allege this high usage against your estate and of a thing that we hold in common, we pray judgment.}

Friskeney. The estate which we claim goes to the defeasance of your title, which is not good against us who have an equal estate

[1] Herle and Scotre are for the avowant; Hedon, Malberthorpe, Friskeney, Toudeby, and Passeley for the plaintiff.

[2] An alternative version of Herle's last speech. What is relatively ancient is 'high up;' what is relatively modern is *plus bas*. The argument becomes somewhat plainer in the second report of this case. See below, p. 179.

usage,[1] ceo overe[2] pur nous qe sumes pryvez plus qe pur vous q'estes estraunge etc.

Toud. Nous avoms vewe[3] tiel plee ceynz de Sire Richard Walleys ou il clama les services le[4] parcener.

Scrop. Nent semblable des services, qar service[5] si chiet[6] en profit en parcenerye[7] et doune attendaunce.[8] Mès issint n'est pas garreine, qe poet estre qe avaunt temps de memorie qe la garreine fust aloté et chiet en pourpartie.

Toud. Sire, c'est une chose qe ne serra jammès departie en la chauncelrie entre parceneres.[9]

Malm. Il ne poet qu'il[10] n'ad fors estat de parcener sur parcener avower, sy noun par un de deux voyes: ou pur[11] qe les aultres[12] reles[erent] etc., ou purceo qu'il avoit[13] aultre choce com en allowaunce de ceste garreine. Mès ore etc. Par quei etc.

Toud. Jeo ne sey veer coment parcener poet avoir garreine soul, fors *ut supra*.

Berr. Poet estre qu'il trova aultre[14] chasauntz et les engagea et fit tiele maniere d'atachement et receu les amendetz sauntz ceo qe les altres rien avoynt. Et poet estre q'il[15] chacea soul a sa volunté, issint qe les aultres corerent[16] et ceste chose eu et[17] usé etc.

Pass. Qaunt un des parceneres use en le comune heritage, le user de un overe pur toutz[18] et doune tittle[19] a toutz les aultres parceners. Jugement etc.

{*Berr.*[20] Qaunt le Roy grante par my la chartre gareyne il ly ne grante si noun des terres[21] mesme cely a qy il grante la garreyne. Dount put il user garreyne en autri terres et si long temps[22] qe son user cherra en le dreit.

Fris. Sire, nous vous dioms qe Jon nostre cosyn usa la garreyne com de coure leyns en temps le Roi Richard et en temps le Roi H. et en temps le Roi E., sanz ceo qe Marmaduke soul usa la gareyne. Prest etc.

Fris.[23] Nous vous dioms que nos auncestres en temps le Roy Richard et en temps le Roy H. et en temps le Roy E. corurent la eynz issi qe Marenduk soul qi estat il unt ne usa unqez. Prest etc.

Et alii econtra.}

[1] usagie *B*. [2] sever' *D*. [3] Nous veymes *L*. [4] de son *L*; soun *B*, *D*. [5] *Om.* qar service *A*; *ins. B*, *D*. [6] service est une chose qe chiet *L*. [7] *Om.* en parcenerye *L*. [8] doune ouelement *R*; et doune ouwelement a touz *L*. [9] Toud. Ceo ne put estre qe jammez ne serra *L*. [10] qi *D*. [11] *Ins.* ceo *B*, *D*. [12] aunc' *B*. [13] navoit *B*, *D*. [14] autres gentz *B*, *D*. [15] rienz avoient ou pur ceo qil *B*; rien navoient ou por ceo qil *D*. [16] comencerent (?) *A*; unqes ne comunerent (?) *B*; *sim. D*; sanz ceo qe les autrez ja naveynt ne gardeyn mistrent ou pur ceo qil soul cora sanz ceo qe les autrez corerent *R*; *sim. L*. [17] *Om.* et *A*; *ins. B*. [18] ceaux *A*; toux *B*; *sim. D*. [19] *Ins.* etc. par son user *B*. [20] This passage has only been found in *R*, *L*. [21] termes *R*. [22] user la gareine si lungement en autres terres *L*. [23] This version of Friskeney's speech from *L*.

with you. As to the usage which you allege, that operates more for us who are privies than for you who are a stranger etc.

Toudeby. We have seen such a plea here in the case of Sir Richard Walleys where he claimed the services of a parcener [and failed].

Scrope, J. This is not like a claim of services, for that lies in profit [to be received] in parcenry and comprises a claim for attendance;[1] and such is not the case with warren; for it may be that before time of memory the warren was allotted and fell into the partition.

Toudeby. But, Sir, it is a thing that shall never be partitioned among parceners in the Chancery.

Malberthorpe. One who has only the estate of a parcener can only avow upon a parcener in one of two ways: either because the others have released to him, or because [the other parcener] has received something in allowance for this warren. But here [there is nothing of that sort], wherefore etc.

Toudeby. I cannot see how one parcener can have warren all to himself, unless it be as above.

Bereford, J. It may be that he found the others hunting and took gage from them and attached them in that way and received amends therefor, and that the others had nothing, and never appointed a warden. Also it may be that he hunted all alone at his own free will, so that the others did not hunt, and that in this way he had and used the thing [that is, the warren] etc.

Passeley. When one of the parceners makes use of the common heritage, the user by one operates for the others and gives title to all the other parceners. Judgment etc.

{Bereford, J.[2] When the King grants warren by charter, he grants it only in the grantee's own land. So such a grantee may [wrongfully] use warren in another's land, and this for so long a time that it will become matter of right.

Friskeney. Sir, we tell you that John our [ancestor] used the warren by coursing therein in the time of Kings Richard,[3] Henry, and Edward, without Marmaduke having a sole use of the warren.}

{*Friskeney.*[4] We tell you that our ancestors in the times of King Richard, King Henry, and King Edward coursed therein without Marmaduke, whose estate they have, ever using it solely.

Issue joined.

[1] The sort of 'attendance' that is the correlative of lordship. Apparently Toudeby has cited a case in which an attempt by one holder of an undivided share to exact service from another on the ground of long usage was disallowed. See the next report (98B.)

[2] This passage is not in all MSS.

[3] Apparently it should be 'John.'

[4] Another version of the last speech.

98B. DE LA MORE *v.* THWING.[1]

Robert de la More porta son replegiari vers Marmeduke de Twenge et se pleint q'a tort prist un son leverer [2] etc.

Hedone [3] avowa etc. par la reson qe mesme cestui Marmeduke tent les ij. parties del manier de C. engarrené, dont le lieu ou la prise fut fet est parcele ; et, pur ceo q'il trova en mesme le lieu son leverer coraunt a conynges, si le prist il com bien lui leust etc.

Malb. Vous estez estrange purchasur de ceo qe vous tenez en le dite manier. Par qei primes covent moustrer fet du Roy a la court qe [4] vous devez garreine avoir.

Herle. A vous n'ay jeo mester a respondre [5] ne a moustrer, qar [6] nous sumes cy en un *replegiari* ou assez nous suffyt excuser nostre tort.

Malb. Jeo vous face de tiel condicion qe a force covent qe vous moustrez ; qar qaunt qe vous avez en le dite manier si est de vostre purchaz et nent par descent. Et mesqe ceo qe vous avez en le dite manier a ore [7] en la seisine vostre feffour [8] eust esté garryné, il vous covent avoir fet [9] de Roy avant ceo qe vous poiez garreine [10] clamer. Par qei etc.

Ber.[11] A vous n'ad il nul mester a conustre.[12] Mès quel hure qe la court lui demande ou lui chace a ceo, assez put il avenir par temps etc.[13]

Malb. Donqe vous dioms qe a tiel avowerie ne put il avenir, par le reson qe le lieu ou la prise fut fet si est un grant boys, le quel nous tenoms ove lui en comune *pro indiviso*, sanz ceo qe nul seet [14] son several. Et vous dioms qe le manier [15] de C., dount le boys [16] avantdit est parcele, fut en ascun temps en la seisine un Duncan,[17] qe cele manier tynt engarrené et tut son temps. Après qi mort le manier descendy a iij. soers etc. scil. S. A. M. Et H. morust sanz heir de soy.[18] De M. issit un Robert. De Robert descendy a J. De J. a cesti Robert q'ore se pleint [19] la terce partie de mesme le manier com heir mulieré [20] par descent. Et Marmeduke tynt les ij. parties. Et

[1] From *M*: compared with *R*, *P*, *Q*. [2] *Ins.* en un boys et deteni *R*; en un boys qe est gareynne et avoit pris viij. couningges *P*. [3] Rustone *R*. [4] mostrer a la court pour qei *P*. [5] conustre *Q*. [6] *Ins.* nous ne sumes pas issi en un quo waranto a mostrer etc. *P*. [7] manier fust ore *Q*. [8] *Ins.* et *M*, *P*. [9] especialte *P*. [10] estat *Q*. [11] *Ins.* Pour qaunt qe vous avez unqore dit *P*. [12] moustrer *Q*. [13] assez par temps put il mostrer *P*; a cet et la court fra ceo qil veet qe set a fere *R*. [14] siet *P*, *Q*. [15] boys *P*, *Q*. [16] cel lieu *P*. [17] Donecan *Q*. [18] *Om.* et . . . soy *P*. [19] *Ins.* et issi est *R*; seisi de *Q*. [20] cum heir M. *P*; com heir Muriel com parcener *Q*.

98B. DE LA MORE *v.* THWING.

Robert de la More brought his replevin against Marmaduke of Thwing and complained of the wrongful taking of a greyhound etc.

Hedon (?)[1] avowed etc. for the reason that Marmaduke holds two parts of the manor of C. enwarrened, whereof the place where the taking was made is parcel, and, because he found [the plaintiff's] greyhound chasing conies in the said place, he took it, as well he might.

Malberthorpe. You are a stranger and purchaser of what you hold in the said manor, so that in the first instance you ought to show to the Court the King's deed saying that you may have warren.

Herle. I have no need to give [such an] answer to you or to show you anything, for we are not here in a *quo waranto*, but are in a replevin where it suffices us to excuse our tort.

Malberthorpe. I am making you out to be of such a condition that of necessity you must show [a deed], for what you have in the said manor comes to you by purchase and not by descent; and, even if what you have in the manor had been enwarrened when it was in your feoffor's seisin, it behoves you to have the King's deed before you can claim warren. Wherefore etc.

Bereford, J. He has no need to make this disclosure to you; but, when the Court asks for it or drives him to it, he may by that time have enough to show.

Malberthorpe. Then we tell you that to this avowry he cannot get, for the reason that the *locus in quo* is a great wood which we hold in common with him in undivided shares in such wise that no one knows his several. And we tell you that the manor of C., whereof the said wood is parcel, was at one time in the seisin of one Duncan, who held this wood enwarrened all his time. On his death the manor descended to three sisters etc., to wit, Emma, Helewise, and Muriel. And Duncan died without an heir of his body. From Muriel [by divers mesne descents][2] one part of the manor descended to Robert the plaintiff as the legitimate heir of Muriel. And Marmaduke holds the [other] two parts. And, since we hold a third part of the manor

[1] Probably 'Herle.' [2] They are inaccurately stated in the manuscripts.

demandoms jugement del hure qe nous tenoms la terce partie de tel manier com heir et mulieré [1] et un des parceners, si Marmeduke, q'est estrange purchasour et qe n'ad estat forsqe de parcenerie,[2] pusse de nostre leverer tiel avowerie fere.

Herle. Nous vous dioms qe pus le temps qe Marmaduke les ij. parties purchacea de cel manier [3] et son feffour devant lui et les auncestres son feffour de temps dont memorie ne court ount ewe et usé ceste garreine severalment en le dit manier sanz ceo qe Robert [4] ou nul de ses auncestres corust, prest etc. Et demandoms jugement.

Malb. Et nous demandoms jugement, del hure qe Dunkan nostre auncestre tynt ceux boys com appendant au dite [5] manier, et de ceo morust seisi etc., et vous estes estrange purchaceour et n'avez qe estat de parcenerie, et nul especialté ne moustrez qe nous forclost. Jugement si avowerie etc.

{*Herle.*[6] Vous avez conu qe nous sumes estraunge pourchasour et rienz privé du saunk, et rienz ne ditez a defere nostre title ne le usage qe est si haut. Jugement.

Frisk. L'estat qe nous clamoms est a defere vostre estat; et, desicum l'estat qe vous avez si est le pluis bas et vous allegez usage encontre nostre estat si haut et de chose qe nous tenoms en comune, demaundoms jugement.

Ston. Nous seisi et nostre feffour seisi et les auncestres nostre feffour du temps etc.}

Ber. a *Toud.*[7] Il vous dit q'il tut son temps [8] et son feffour devant lui et les auncestres son feffour du temps etc. ount eu et usé severalment etc. Qei responez vous a cel usage?

Toud. A ceo ne avoms mester a respondre, qe nous avoms veu qe un avowrie fut fet pur services arrere et ceo pur meintenir alleggea seisine de temps etc. et alleggea parcenerie d'autrepart de comune auncestre paramount entre le pleintif et celui qe fit le avowrie et par agard le avowrie fut cassé, nient countreesteaunt la longe seisine.[9] *Sic ex parte ista.*

Scot.[10] N'est mye merveille en tel cas, tut ne soit mye meintenable de ley, qar [11] prescripcion de temps ne court mye entre parceners

[1] cum heir M. *P*; com heir Muriel *Q*. [2] et Marmeduc tint les ij. parties cum estraunge purchasour et n'ad fors estat de parcener *P*; *sim. Q*. [3] *Ins.* il ad eu et use et tenu en gareyne *P*; *sim. Q*. [4] Robert *P*, *Q*; Rogier *M*. [5] auncestre corust en cele boys com appent al *Q*. [6] These three paragraphs from *P*. [7] *Om.* a Toud. *L*. [8] *Ins.* ly et *L*. [9] et pur [pur ceo *Q*] meyntenir ceo fut allege [seisine *Q*], et ceo fut allege par parcenerie entre le plaintif et lavowant del comune auncestre et par agarde l'avowrie fut quasse nient contreesteaunt long seisine *P*; *sim. Q*. [10] Ston. *P*; Stor. *Q*. [11] qar *P*, *Q*; par *M*.

as heir of Muriel, one of the parceners, we demand judgment whether Marmaduke, who is stranger and purchaser and who has no estate save a parcener's share, can make this avowry for our greyhound.

Herle. We tell you that Marmaduke, ever since he purchased two parts of this manor, and his feoffor before him, and the ancestors of his feoffor from time immemorial, have had and used this warren in the said manor severally, without this (*sanz ceo*) that Robert or any of his [Robert's] ancestors chased there. Ready etc. And we demand judgment.

Malberthorpe. Since Duncan our ancestor held this wood as belonging to the said manor and died seised thereof etc., and since you are stranger and purchaser and have but a parcener's share and show no specialty that forecloses us, we pray judgment whether [you can make] avowry etc.

Herle.[1] You have confessed that we are stranger and purchaser and not in any wise privy in blood, and have said nothing to defeat our title nor the usage from so remote a time.

Friskeney. The estate that we claim does defeat your estate; and we pray judgment, since your estate is lower and you allege usage of a thing held in common against our estate which stands so high.

Scotre (?).[2] We are seised, and our feoffor and his ancestors from time etc.

Bereford, J., to *Toudeby.* He tells you that he during all his time, and his feoffor before him, and the ancestors of his feoffor from time [immemorial] have had and used [this warren] in severalty. What say you to this user?

Toudeby. To that we need not answer, for we have seen an avowry made for services arrear, and to maintain it seisin from time immemorial was alleged. Then there was an allegation by the other side of parcenry between plaintiff and avowant, due to their having a common ancestor. And, notwithstanding the long seisin, the avowry was quashed.[3] So in this case.

Scotre. No wonder that the avowry in the case that you mention was not maintainable by law; for prescription does not run among

[1] This and the next two speeches are not in all the manuscripts.

[2] Some manuscripts introduce Stonor and some Scrope as an advocate. Apparently, however, Scotre is the person who is meant.

[3] See the reference to the case of Sir Richard Walleys above, p. 178.

a mettre le sang[1] en servage. Mès en tiel cas pledoms a nostre dreit demene, et a cele meintenir avoms alleggé seisine several[2] de ceste garreine du temps etc., q'est le plus haut title qe seit; et nous voloms averer. Jugement.

Fris. Il covent qe le dreit[3] soit trié par cesti bref, qar autre remedie n'avoms en ceo cas. Dont vous veez bien coment nous avoms dit qe le manier de C. fut en ascun temps en la seisine un Dunkan, a qi ceste comune[4] est regardant.[5] Et sur ceo avoms dit coment le dreit de manier descendy etc., et[6] avoms alleggé parcenerie de une part et d'autre, et il ne alleggent autre rien pur eux[7] forsqe torcenous possession continué pus le temps Dunkan, qe ne defet mie le dreit[8] plus haut; le quele dreit nous voloms averrer, et eux estrange purchasour,[9] qe rien ne mostre etc. Et demandoms jugement etc.

Scrop. Si le Roy usast son *quo waranto* vers Marmeduke, q'est un bref de plus haut possession qe[10] veot estre pledé en sa[11] nature qe nul autre bref, unqore en cesti bref avereit il bon respons a dire qe son feffour devant lui[12] de temps dont memorie ne court ount eu et usé etc. en la forme q'il ount alleggé, sanz autre title moustrer.[13] A mult plus fort devers[14] vous.

Malb. Jeo dy qe ceo[15] respons liereit[16] plus fort en ley en un *quo waranto* encountre le Roy qe ne freit si une parcenere alleggast sur son parcener de sang.[17]

Scrop. Si le bref de *quo waranto* fut porté pur ceo qe vous le clamez[18] com appendaunt com un des heirs,[19] del hure qe vous ne nul de voz auncestres unqes pus le temps de memorie espletz de garreine ne preistez,[20] qe dirrez vous.

Pass. [21] Robert avereit eyde de Marmeduke et le r[espouns] qe[22] Marmeduke ad ore[23] countre Robert adonqe servereit pur l'un et pur l'altre; qar la ou parceners tenent un heritage a qi un tiel maner de profit soit appendant, et l'un parcener continue son estat par seisine[24] sanz ceo qe l'autre nient cleyme,[25] en ceo cas la seisine l'un counte[26] la seisine l'autre. Et del hure qe vous estes nostre parcener et ceo manier tenetz en parcenerie, jugement etc.

Scrop. Vous nous avez fet[27] estrange purchasour, et sur ceo

[1] le franct[enement] *P*; saunk *Q*. [2] en severalte *Q*. [3] qe ceo title *Q*. [4] ceo bois *P*; *sim. Q*. [5] apend[ant] *P*. [6] *Om.* et *M*. [7] riens vers nous *Q*. [8] *Ins.* de *P*. [9] pourchaseours *Q*. [10] haut et *P*, *Q*. [11] plede de altre *P*, *Q*. [12] *Ins.* et cez auncestres *P*; *sim. Q*. [13] altre chose dire *P*, *Q*. [14] devers *P*, *Q*; devez *M*. [15] qe un tiel respons *Q*. [16] se lie *Q*. [17] ley, si parcener allegast sur parcener en le franc tenement [en le sank *Q*] qe ne freit vers le Roy en un quo waranto *P*; *sim. Q*. [18] porte devers nous qe clamoms *Q*. [19] *Om.* com . . . heirs *Q*. [20] preytes *P*; preistes *Q*. [21] *Ins.* La *Q*. [22] pur *M*. [23] *Ins.* done *P*. [24] *Om.* par seisine *Q*. [25] lautre rienz y mette de cleym *P*; *sim. Q*. [26] lun serra acounte *P*; *sim. Q*. [27] aferme *P*.

parceners so as to introduce service among those who are of one blood. But in the present case we are pleading on our own right, and to maintain it we have alleged seisin in severalty of this warren from time [immemorial], and that is the highest title that there can be; and this we will aver. Judgment.

Friskeney. It is necessary that the right should be tried by this writ, for we have no other remedy. So you see how we have said that the manor of C., to which this warren is regardant, was at one time in the seisin of one Duncan, and how we have said that the right descended [in manner aforesaid], and that we have alleged parcenry on the one side and on the other, and that they have alleged nothing but tortious possession continued since the time of Duncan, which cannot defeat the right—the right which stands higher up and which we are ready to aver. And they are a stranger and purchaser and show nothing [in the way of specialty]. We demand judgment.

Scotre (?). If the King were to use his *quo waranto* against Marmaduke—a writ which must be pleaded in stricter accordance with its nature than must any other writ, for it goes back to the highest possession—still even in that writ it would be a good answer for Marmaduke to say that his feoffor [and his feoffor's ancestors] from time immemorial have had and used [the right of warren] in the form here alleged without showing other title. *A multo fortiori* [what would serve us against the King will serve us] against you.

Malberthorpe. But I say that such an answer would serve better against the King in a *quo waranto* than it would serve for a parcener against his parcener in blood.

Scotre (?). If the writ of *quo waranto* were brought against you, and you as one of several heirs claimed [the warren] as appendant, and [it were asserted that] neither you nor any of your ancestors within time of memory ever took any esplees of the warren:—what would you say then?

Passeley. In that case Robert would have aid of Marmaduke, and the answer that Marmaduke now has against Robert would serve them both [against the King]. For when parceners hold a heritage to which any kind of profit is appendant, and one of them continues his estate by seisin without the other making any claim, in that case the seisin of the one is accounted the seisin of the other. And we demand judgment, since you are our parcener and hold this manor in parcenry.

Scotre (?). But you made us out to be stranger and purchaser,

avoms respondu en affermaunt la garreine en nostre persone *racione predicta* nent clam[ant] en ceo cas en parcenerie.[1] Par qei etc. Estre ceo nous pledoms *ad diversa*, qar vous pledez a ceo qe le manier est tenue en comune[2] en parcenerie qe rien n'est Marmaduke[3] abase et nous pledoms[4] a la garreine, prest etc.

Toud. Robert de la More mon ael et Robert vostre aele,[5] qi heir vous estes, tyndrent cele manier en parcenerie, a qi ceste garreine est appendaunt. Et pus moustra coment J. aiel[6] Marmeduke fut issue de[7] Agnes la une soer, et dit qe celui Johan enfeffa Rauf piere Marmeduke, et Rauf enfeffa Marmeduke q'ore demande; les queux feffementz ne defount[8] mye la tenance[9] de parcenerie, del hure qe vous estez einz apres la mort vostre auncestre com heir de sang,[10] a quels R. et J. le dreit de ceo manier descendy, le quel dreit est entier en sey, qe auxi[11] fort fut attaché en la persone Robert com en la persone Johan, del houre q'il furent com un heir de sang. Dont la ou jeo afferme[12] auxi avant en la persone mon parcener le dreit[13] com en la moye,[14] sanz moustrer especialté qe defet mon dreit, il ne put jammès ne ne doit de comune ley nous de cel dreit estranger, si etc.[15]

Herle. Depus qe vous ne avez conu[16] et[17] nous voloms averrer nostre seisine et la seisine l'auncestre nostre feffour de temps etc. sanz ceo qe vous et[18] voz auncestres unqes rien n'avoint,[19] jugement etc.

Toud. Del hure qe vous ne poiez dedire qe nous ne sums vostre parcener etc. et le dreit nous est descendu com a parcener de sang,[20] et a nous ouster de cele dreit ne moustrez nul fet qe nous forclot, jugement.

Ber. Si vous voillez demorrer,[21] il covent qe nous seioms asserté le quel Dunkan, le comun auncestre de qi vous pernez vostre foundement, fut avant temps de memorie ou pus.

Toud. A ceo n'avoms mester a dire, del hure qe nous voloms averrer[22] nostre dreit etc. *ut supra*, et qe le manier[23] a qi le garrein est appendaunt est[24] tenu en parcenerie.

Scot.[25] Nous vous dioms qe celui Dunkan de qi il pernount lour title[26] fut avant temps de memorie. Par qei le foundement de lour

[1] nent clamant parcenerie en ceo *or* en cep *P*; vous nous avetz afferme la garreine en nostre persone racione predicta nyent clamant en ceo parcenerie etc. *Q*. [2] *Ins.* et *Q*. [3] Marmaduke *by a late hand M*. [4] qe rienz nest [est *Q*] a M. et nous pledoms tut *P*; *sim. Q*. [5] et J. vostre aiel *P*, *Q*. [6] al *M*. [7] *Om.* de *M*; *ins. P*, *Q*. [8] esteynt *Q*. [9] nature *P*, *Q*. [10] franct[enement] *P*; saunk *Q*. [11] est entre eux ij. auxi *P*. [12] *Ins.* le droit *P*. [13] *Om.* le dreit *P*. [14] cum en ma persone demene *P*; en la moy *Q*. [15] *Om.* si etc. *Q*. [16] vous nous avez conu le droit *P*, *Q*. [17] *Om.* et *Q*. [18] ou *Q*. [19] aveietz *Q*. [20] franc[tenement] *P*; saunk *Q*. [21] *Ins.* en jugement *P*, *Q*. [22] nous avoms mostre *P*; *sim. Q*. [23] *Om.* dreit . . . manier *Q*. [24] et *Q*. [25] Ston. *P*; Scotr. *Q*. [26] de qi il parlent *P*, *Q*.

and thereupon we made our answer, affirming the warren in our person for the reason aforesaid without any claim of parcenry. Wherefore etc. Besides, we are pleading in different directions; for you plead that the manor is held in common in parcenry, which is nothing to Marmaduke, and we plead wholly about the warren. Ready etc.

Toudeby. My grandfather and your grandfather, whose heir you are, held in parcenry the manor to which the warren is appurtenant. (And then he showed how the feoffor of Marmaduke was issue of Emma, one of the sisters.[1]) And the said feoffment does not defeat the parcenry since you are 'in' after your ancestor's death as heir in blood.[2] And the right of the said manor descended to [my grandfather and to your grandfather] as one entire thing, which was as strongly attached to the person of [your grandfather] as to the person of mine, as though they formed but one heir in blood. Thus, whereas I affirm the right as fully in the person of my parcener as in my own, he cannot and by common law ought not to estrange us from the right without showing some specialty whereby our right is defeated.

Herle. Since you have admitted and we are ready to aver our seisin and the seisin of our feoffor from time immemorial, without your ancestors ever having anything, we demand judgment etc.

Toudeby. Since you cannot deny that you are our parcener etc. and that the right has descended to us as a parcener in blood, and since to oust us from this right you show nothing and no deed that forecloses us, we demand judgment.

Bereford, J. If you are going to demur there, we must know for certain whether Duncan, the common ancestor on whom you found your title, lived before or after time of memory.

Toudeby. We have no need to say that, since we are willing to aver our right as aforesaid, and that the manor, to which the warren is appurtenant, is holden in parcenry.

Scotre. We tell you that this Duncan, from whom they take their title, lived before time of memory. Therefore the foundation of their

[1] An inaccurate statement of the history of Emma's share is here given by the manuscripts.

[2] The avowant took by feoffment from his father, but after his father's death was his father's heir.

title qe lour durreit cele dreit ne put estre conu et sewe [1] par nule voye de ley; qar, si jeo vousise pleder al estat Dunkan, de qi il pernount lour foundement, et s'il eust forfet [2] son dreit dedeinz lour seisine et [3] son estat,[4] solonc ceo q'il ount dit, la verité de ceo [5] par nule verdit d'enqueste ne put estre conu; [6] qar homme ne put conisance fere [7] de chose avant temps de memorie. Par qei etc.

Brab. ad idem.[8] Homme put en cas avoir dreit mesqe lui defaut prove de [9] dreit; et, si la prove defaute, le dreit est mult feble et simple [10] en sey.[11] Ore possible est qe vous avez dreit en ceste garreine, solonc ceo qe vous avez dit com un dreit qe vous est descendu par un Dunkan vostre auncestre qe fut avaunt temps de memorie, a quel dreit vous defaut la prove, qar [12] de son estat ne put homme mye conustre. Par qei jeo ne [13] say vere [14] par quele title vous poiez ceste garreine clamer.

Toud. Qe nostre ael [15] tynt ceste garreyne en parcenerye ove Johan ael Marmeduke en temps le Roy Johan, ael le Roy q'ore est, et corust a sa volunté et les esplés [16] prist com appendants [17] a [18] garreyne etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 59, York.

Replevin for a greyhound by Robert de la More against Marmaduke of Twenge [Thwing, co. York] and Hugh Pegge. On [30 Jan. 1307] Monday next before the Purification of B. Mary in 35 Edw. I. in the vill of Lund in a place called Hyngis, in the wood of that vill, they, with others who are named, took the greyhound, and they still detain it; damages are laid at 40*s.*, and gage for the delivery of the hound is demanded.

Marmaduke and Hugh come and gage the delivery, and Marmaduke answers for both of them. He avows the taking, for that he holds the manor of Lund, whereof the *locus in quo* is parcel, and within that manor he has his free warren, and he found the hound within his said warren and it had taken a rabbit; and so he took the hound, as well he might.

The plaintiff says that the avowant cannot avow the taking as lawful; for he says that in past time the manor of Lund belonged to one Duncan Darel, who died seised thereof in his demesne as of fee; and that, since he died without an heir of his body, it descended to Emma, Helewise, and Muriel as his sisters and heirs; and that it was partitioned between them; and that from Emma the right of her share descended to one Marmaduke as her

[1] estre meintenu *Q.* [2] forfet *P*; forfait *Q.* [3] *Om.* et *P, Q.* [4] *Ins.* estat de ceo *P, Q.* [5] *Om.* de ceo *Q.* [6] trove *P, Q.* [7] avoir *P, Q.* [8] *Om.* ad idem *P, Q.* [9] *Ins.* cel *P.* [10] *Om.* et simple *P.* [11] *Ins.* et *Q.* [12] et *Q.* [13] *Om.* ne *M*; *ins. P, Q.* [14] *Om.* vere *Q.* [15] auncestre *P.* [16] et lees enplez *Q.* [17] appent *Q.* [18] *Ins.* sa *P.*

title which would give them this right cannot be discovered or known by any legal process. For if I wished to plead to this estate of Duncan, from which they take their foundation, and the case was that, as they say, he forfeited his right in their seisin,[1] the truth of this could never be found by any verdict of an inquest, for one cannot take cognizance of what occurred before time of memory. Wherefore etc.

Brabazon, C. J., to the same effect. There are cases in which a man may have a right but no proof of his right; and, for want of proof, the right itself is a weak, simple thing. Now it is possible that you [the plaintiff] have, as you say, the right in this warren, as a right which has descended to you from Duncan your ancestor, who lived before the time of memory, and yet you have no proof of your right, for of his estate we can take no cognizance. Therefore I do not know by what title you can claim this warren.

Toudeby. Our grandfather held this warren in parcenry with the grandfather of Marmaduke, in the time of King John, [great-] grandfather of the King that now is, and coursed there at his will and took esplees pertaining to the warren etc.

Issue joined.

Note from the Record (*continued*).

son and heir, and from him to one Robert as his son and heir, and from him to one Marmaduke as his son and heir, who gave his share of the manor together with the share of the said Helewise (which Marmaduke, Emma's son, had, after Helewise's death, taken to himself [*occupaverat*]) to Marmaduke the avowant; and that from Muriel the right of her share descended to one John as her son and heir, and from John (since he died without an heir of his body) to one Helewise as his sister and heir, and from her to one John as her son and heir, and from him to one Jacob as his son and heir, and from him to Robert, the plaintiff, as his son and heir; and that the plaintiff and all his ancestors and likewise the avowant and his feoffor and his [the feoffor's] ancestors from the time of Duncan Darel, their common ancestor, have always held the said wood in common and undivided as parceners.

The plaintiff's reply to the avowry continues thus:—He admits that Duncan had free warren in the manor, but this warren is as much annexed to the share that the plaintiff holds as to the share that the avowant has purchased. And since they hold the wood in common, he demands judgment whether the avowant having a parcener's estate can, by reason of the warren, avow the taking as lawful upon the plaintiff his parcener.

The avowant says that, whereas the plaintiff asserts that the avowant is

[1] This can hardly be right, but an acceptable reading has not been found.

Note from the Record (*continued*).

his parcener, he (the avowant) is altogether a stranger to the plaintiff. For he says that he has the manor by the gift of his father Marmaduke, who purchased it from his father Robert; and that the avowant and this Marmaduke and Robert and the ancestors of Robert, holders of the said manor, were from time of which there is no memory seised of having free warren in that wood in severalty by making attachments and taking amends as well of the plaintiff and his ancestors as of others whomsoever coursing and doing trespasses in the said warren—without this (*absque hoc*) that the plaintiff or his ancestors had their warren there, or coursed there, or ever took attachments or amends or any other things that to free warren pertain; and of this he puts himself upon the country.

The plaintiff says that the avowant cannot by prescription of time (as the avowant alleges) enjoy the said warren in severalty in the said wood. (*Note continued on opposite page.*)

99A. ANON.[1]

Cosinage, ou il dit q'il fust heir cely parmy qy il fist le resort. L'altre dit q'il fust fiz un autre engendré. Et le tenaunt dit q'il avendra mye qar le pere ly norist cum soun fitz. De consanguinitate ou le tenant dit q'il fut fitz et heir en la lygne et n'entendi poynt qe nul resort pout estre fait vivant lui. Ou dit fut non pas le fitz cely einz le fitz un autre. Et sic pendet.

Un homme porta soun bref de cosynage vers un Thomas de Bloteweles[2] et demaunda certeynz tenementz de la seisine un Hervi[3] soun cosyn, qe de ceo morust seisi. De Hervi, purceo q'il morust saunz heir de sey,[4] resorti etc.[5] a Margerie come aunte et heir, seor Maud meire Hervi. De Margerie[6] a B. De B. a A. q'ore demaunde.

Pass. La ou il dit 'de Hervi purceo q'il morust sauntz heir de sey resorti etc.,' nous vous dioms qe après la mort Hervi si entra mesme celuy Thomas com fitz et heir et eynz est com heir. Jugement si, vivaunt nous en la dreyt lygne, en resortaunt rien pussetz demaunder.[7]

Malm. Nent le fitz Hervi, einz le fitz William de Rosynge[8] engenderé d'une Margerie la dame de C., prest etc. Et demaundoms jugement.

Herle. A ceo n'avendretz mye, qe Hervi nostre piere morust seisi

[1] *Vulg.* p. 43. Text from *A*: compared with *B*, *D*, *L*. Second part of headnote from *D*. [2] Bowelles *L*; Boldwels *D*. [3] Herin *Vulg.* *And so throughout.* [4] de son corps *L*. [5] resorti le fee et le demene etc. *L* [6] *Ins.* a A. etc. de A. *B*. [7] rien a la lynge collateral pusse resorter *L*. [8] Rosigne *B*.

Note from the Record (*continued*).

For the plaintiff says that John, son of Muriel, whose heir the plaintiff is, held the wood in common and undivided along with Marmaduke, Emma's son, his parcener, and along with Robert, son of that Marmaduke, within time of memory, to wit, in the time of King John and in the time of King Henry III., and by reason of his share had free warren in the wood in common with that Marmaduke and his son Robert, and at his will took amends for trespasses in the same and all other things pertaining to warren along with the same Marmaduke and Robert; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of All Souls. There was a further adjournment to three weeks from Easter. No verdict has been found.

99A. ANON.

If on *A*'s death *B*, who has been recognized by *A* as his son, enters as son and heir and is seised, *semble* that a collateral kinsman of *A* will not be able to recover the tenement from *B* by the averment that *B* is the son neither of *A* nor of any wife of *A*.

A man brought his writ of cosinage against one Thomas of Bloteweles and demanded certain tenements on the seisin of one Hervey his cousin, who thereof died seised, and, because he died without an heir of his body, [the right] resorted to Margery as aunt and heir, sister of Maud mother of Hervey, and from Margery to B. and from B. to A. the now demandant.[1]

Passeley. Whereas he says 'from Hervey, because he died without an heir of his body, [the right] resorted,' we tell you that upon Hervey's death this same Thomas entered as son and heir, and is in as heir. Judgment, if, while we in the direct line are alive, you can demand anything by 'resorting.'

Malberthorpe. You are not the son of Hervey, but the son of William of Rosing begotten upon Margery the lady of C. Ready etc., and we pray judgment etc.

Herle. To that you cannot get, for Hervey our father died seised

[1] It will be observed that the 'resort' in this case is to a maternal relation. Nothing, however, seems to turn upon this.

etc. et nous tient en [1] sa vie come soun fitz; et après sa mort si entrames come soun fitz et eynz sumes come heir. Jugement si ore nous pussetz estraunger.

Scrop. Si Thomas fust vowché a garrauntie par le fait Hervi soun piere com fitz et heir,[2] il serroyt lié a la garrauntie; et ceo est purceo qu'il est conu pur [3] fitz et est eynz après la mort soun piere com heir. Par quei, depus qu'il serroit chargé par le fait soun piere com fitz et heir, il semble fort [4] de luy estraunger pur rien q'est unqore dit.

Spigournel. La ou vous dites qu'il n'est pas le fitz Hervi, c'est [5] un graunt priveté, qe ne chiet geres [6] en conissaunce de pays. Mès il vous dit qe Hervi en sa vie luy tient com fitz et ly norist [7] et conu com fitz,[8] et est eynz, et ceo veot il averer. Ceo chiet bien en conissaunce du pays. Par quei etc.

Herle. Si homme parlast del estat Margerie, aschune choce par cas serroit [9] etc. Mès il parle del estat Hervi soun [10] piere qe ly teint et ly norist [11] come fitz a tote sa vie, et est einz [12] et ceo tend d'averer. Voletz l'averement?

Friss. Sire, il semble q'il nest mye mestier del houre qe nous le [13] fesoms tot estraunge a Hervi et le donoms piere William [14] par noun et une [15] miere [16] Margerie, qe unqes a Hervi fust [17] acoplé en matrimoigne. Et ceo n'est pas si graunt priveté qe [18] ne chiet bien en conissaunce du pays. Jugement etc.

Herle. Vous chargetz moult l'estat Margerie, qe ne fut unqes acoplé etc., et ceo ne dusset vous rein [19] fair. Qe posoms qe nous vowsismes [20] pleder a cele,[21] ceste curt n'avereit nul conissaunce d'enquere de cel issue, ne la court ne vous recevereit a tiel issue. Donqe chargetz [22] ceo q'est [23] receyvable et [24] nent [25] etc.

[1] tot *L.* [2] pere qi heir il se fet *L.* [3] com *B.* [4] heir fort serroit *B.* [5] ceste *A*, *L*; cest *B*; ceo est *D.* [6] mye *L.* [7] morist *A.* [8] et apres sa mort com fitz entra *L.* [9] *Om.* serroit *D.* [10] come *B.* [11] norust *L.* [12] *Ins.* com heir *L.* [13] ne *A*; le *B*, *D.* [14] Wauter *L.* [15] verraye *B*; vere *D.* [16] *Ins.* et *A.* [17] fist *A*; ne fut *D.* [18] qil *B*, *D*, *D.* [19] pas *L.* [20] ussom *L*; vousissoms *B*, *D.* [21] a cel coustee *B*, *D*, *L.* [22] a charger *B*, *D*, *L.* [23] qe nest pas *B*; qe nest mye *L*; qe nest *D.* [24] est *L.* [25] resceivable si piert *B* (*over erasure*); resceivable si nient *D.*

etc. and in his lifetime held us as his son; and after his death we entered as his son, and are 'in' as heir. Judgment, whether you can now estrange us.

Scrope, J. If Thomas were now vouched to warranty by virtue of a deed of Hervey his father as son and heir, he would be bound. And that is so because he was recognized as son and is 'in' after his father's death as heir. Therefore, since he would be charged as son and heir by his father's deed, it would seem a strong thing to estrange him, notwithstanding anything that has yet been said.

Spigurnel, J. Whereas you say that he is not Hervey's son, that is a very private matter, and hardly lies in the cognizance of the country. But he tells you that Hervey in his lifetime held him for son and reared him and recognized him as son, and that he is 'in;' and this he wishes to aver, and it lies well in the cognizance of the country. Wherefore etc.

Herle. If we were discussing Margery's estate, there might be something in this assertion; but he is speaking of the estate of Hervey his father, who held him and nourished him as a son; and he is 'in' and tenders an averment of this. Will you receive the averment?

Friskeney. Sir, we have no need to do that, so it seems to me, since we have made him a total stranger to Hervey and have given him a father, William by name, and a mother, one Margery, who never was coupled to Hervey in lawful matrimony; and that is not so privy a matter that it does not fall well within the cognizance of the country. Judgment etc.

Herle. You lay great stress upon Margery's condition, saying that she was never coupled etc. That you ought not to do; for, put case that we wished to plead to this point, this Court would have no power to inquire concerning this issue and would not receive you to an issue of that kind. You must make some allegation which is receivable, and not etc.[1]

[1] The text of the last sentence is obscure.

99B. ANON.[1]

Un Johan porta bref de cosinage vers Thomas de Boudone,[2] et counta de la seisine un H. Pur ceo q'il morust sanz heir de son corps, resorti a Agnes com a aunte et heir, soer Margery miere Henry. De A. descendi a J. q'ore demande.

Pass. La ou il demande ceux tenemenz de la seisine un H., fesaunt le resorte a Agnes com a aunte, en supposaunt qe H. morust sanz heir de sey, nous vous dioms qe nous sumus [3] fitz mesme cesti Henri et einz sumus come heir. Jugement si vous pussez rien demander.

Malb. Nous voloms averrer qe H. morust sanz heir de sey etc.

Berr. Qei r[espone]z vous a ceo q'il vous dit q'il est fitz einz com heir ? [4]

Fris. Ceo ne put il dire, qar il est fitz William de Rustyng, prest etc.

Herle. Nous sumus fitz mesme cestui H.[5] conu et tenu com son fitz tote sa vie, prest etc.

Malb. De quele femme engendré ? Qar ceo covent dire del hure qe nous tendoms d'averrer qe vous estes le fitz William de Rustyng, et issint nent de sang.[6] Et issint estes estraunge a lui et *per consequens* nostre tollur.[7]

Ber. Par qaunt qe vous avez unqore dit, vous ne le [8] poez cum tollur assigner, qar il dit q'il fut tenu et conu pur le fitz H. tut sa vie et einz est com heir. Et la ou vous tendez d'averrer q'il fut le fitz W. de Rustyng, coment put homme ceste chose trier [9] (*quasi diceret nullo modo*) ? Qar impossible serroit a savoir [10] le quel lui engendra : quia impossibile est probatio filiationis nisi presumptive.[11]

Fris. Q'il est fitz W. Rustyng nee et engendree de une Margery la Dayne,[12] qe unqes ne fut couplé a H., de qi seisine etc., en leal matrimoigne, prest etc.

Herle. Unqore vous dioms com avant : conu et tenu pur le fitz H. tut sa vie, après qi mort entrames com heir, et einz sumes.[13] Jugement etc.

Fris. Del hure qe nous voloms averrer qe vous estes fitz Margery la Dayne et engendré de un W. de Rustyng,[14] la quel Margery unqes

[1] Text from *M* : compared with *P*, *Q*, and with a short note in *X*. [2] Boue-done *Q*. [3] qe T. etc. *Q*. [4] est eynz cum fitz et heir *P*, *Q*. [5] A. *M*. [6] *Ins.* H. *P*, *Q*. [7] tolour *P*. [8] les *M* ; ly *Q*. [9] conustre *P*, *Q*. [10] serroit conustre *P*. [11] presumptive *P*, *Q* ; presupposita *M*. [12] *Om.* la Dayne *P*, *Q*. [13] *Ins.* cum heir *P*, *Q*. [14] fiz un William nee et engendre de une Margerie *P* ; fitz M. et engendre de un W. *Q*.

99b. ANON.

One John brought a writ of cosinage against Thomas of Boudon and counted on the seisin of one Hervey, saying that, because he died without heir of his body, the right resorted to Agnes as aunt and heir, sister of Margaret mother of Hervey, and from Agnes it descended to the demandant.

Passeley. Whereas he demands these tenements on the seisin of one Hervey and makes resort to Agnes as aunt, supposing that Hervey died without an heir of his body, we tell you that we are son and heir of this Hervey and are 'in' as heir.

Malberthorpe. We will aver that Hervey died without an heir of his body.

Bereford, J. What say you to his assertion that he is 'in' as son and heir?

Friskeney. That he cannot say, for he is son of William of Rusting. Ready etc.

Herle. We are Hervey's son, acknowledged and holden for son all his life. Ready etc.

Malberthorpe. By what woman? You must say that, since we have tendered to aver that you are son of William of Rusting, and therefore not of Hervey's blood. So you are a stranger to him and consequently our 'toller.'

Bereford, J. What you have said as yet will not suffice to make him your 'toller,' for he says that he was holden and acknowledged as Hervey's son all his life and he is 'in' as heir. And as to your averment that he is son of William of Rusting, how could one try such a matter? (He implied that it could not be done in any way.) It cannot be known who begot him; the only proof of filiation is the presumptive proof.

Friskeney. He is son of William of Rusting, begotten upon and born of one Margery la Dayne, who never was coupled in lawful wedlock to Hervey, on whose seisin [our action is based]. Ready etc.

Herle. We repeat once more: Acknowledged and holden as son of Hervey all his life, and upon Hervey's death we entered as heir and are 'in.' Judgment etc.

Friskeney. Since we are ready to aver that you are son of Margery la Dayne, begotten by one William of Rusting, and that

ne fut acouplé a H., de qi seisine etc., en leal matrimoigne, ne cochaunt ne levaunt près de lui en sa vie, de qi il put[1] avoir conisaunce, a qei vous ne r[espone]z nent, jugement etc.

Spig. Put estre q'il fut né et engendré de une Margery com vous avez dit et q'il fut tenu et conu pur le fitz H. en[2] sa vie, qe chiet en conisaunce de pays. Et a ceo qe vous dites q'il est fitz un William, ceo ne put estre prové[3] *racione predicta.* Dont meutz[4] vaut en ceo cas d'estre conu et tenu pur fitz et nent[5] heir qe d'estre heir verrey[6] de sang et nent tenu ne conu pur tiel.

Et sur ceo allegerunt[7] un aunciene fet qe fut de un Sire Henri de Berkelee,[8] qe n'avoit qe une femme, qe unqes en sa vie conceust[9] enfaunt, et si avoit vj. fitz.[10] Après la mort H. entra l'eyné ; et, pur ceo q'il fut tenu et conu soun fitz en sa vie, il retynt le heritage countre le verroi heir de sang par agard de comune conseil de tut la terre.[11]

Frisk. S'il deit q'il fut conu et tenu pur le fitz H. nee et engendré de ascune femme couplé a lui en leal matrimoigne, fort serroit en tel cas doner l'autre piere[12] et de lui estraunger de sang. Mès del hure qe nous[13] donoms autre miere, qe ne fut unqes couplé a H., jugement *ut supra.*

Ber. Il est a pleder en affermaunt[14] son estat de ceste heritage com chose qe lui est descendu de part son piere et nent de part sa miere.

Malb. Si nous ne seioms receu d'estraunger cesti T. de sang H., il ensywereit q'il tendreit cesti heritage com le heir, a qi[15] il est tut estraunge, et[16] al heritage[17] qe lui descendit de W. de R. son piere, qi heir il est, qe serreit inconvenient.[18]

Herle. Si Thomas fut voché a garauntie par le fet H. soun pere, qi heir il est, si serroit il lyé a ceo q'il est conuz le fiz H. et eynz est cum heir après la mort soun pere, qi heir il est fet. Par qei depuis q'il serroit chargé cum fiz et heir par le fet soun pere, il semble q'il serroit fort de li estraunger pur rien qe vous avez dit unqore.

[1] de ly dount il put *P* ; *sim. Q.* [2] *Ins.* tote *P.* [3] dit *Q.* [4] vous *Q.* [5] et ne mie *P*, *Q.* [6] *Om.* verrey *P*, *Q.* [7] Herle . . . alegga *X.* [8] Workel' *P.* [9] ne conseut *P.* [10] *Ins.* dautres femmes *X.* [11] *Om.* this paragraph, *Q.* [12] partie *M* ; doner a lautre partie heritage *P*, *Q.* [13] *Ins.* ly *Q.* [14] est a affermer *P* ; est a pleder de afferm' *Q.* [15] tendreyt heritage celi a qi *P.* [16] *Om.* et *M.* [17] estraunge et nyent le heritage *P* ; estraunge et amen' le heritage *Q.* [18] *M* stops here. What follows is from *P.*

Margery was never coupled in lawful wedlock to Hervey, on whose seisin etc., and was never couchant and levant by his side while he lived, and since this is a matter whereof cognizance may be had, and you give no answer, we demand judgment etc.

Spigurnel, J. May be he was begotten and born upon and of one Margery as you have said, and that he was acknowledged and holden as son of Hervey in his, Hervey's, lifetime. That lies within the knowledge of the country. But as to what you say about his being William's son, that cannot be known for the reason already given. So it is better in this case to be acknowledged and holden as son, albeit you really are not heir, than to be the very heir in blood but not acknowledged and holden as such.

Thereupon was alleged the ancient case of Sir Henry of Berkeley. He had but one wife, and never in her life did she conceive a child; and yet he had six sons. After his death the eldest entered, and because he was holden and acknowledged as [Sir Henry's] son in his lifetime, he retained the inheritance against the very heir by the judgment of the common council of the whole land.

Friskeney. If [the tenant] said that he was acknowledged and holden as Hervey's son and born and begotten of and upon some woman coupled to Hervey in lawful wedlock, then indeed it would be a strong thing to do were we to give him another father and estrange him from the blood; but we have given him another mother, who never was coupled to Hervey, and, having done this, we demand judgment as above.

Bereford, J. He has to affirm his estate in this inheritance as something that descended to him from his father's and not from his mother's side.

Malberthorpe. If we were not received to estrange this Thomas from the blood of Hervey, it would follow that he would hold as heir this inheritance, to which he is a total stranger, and [1] the inheritance which descended to him from his father William of Rusting: and that would be absurd.

Herle. If Thomas were vouched to warranty by the deed of Hervey as by the deed of his father, whose heir he is, he would be bound to warrant because he is known as Hervey's son and is 'in' as heir after Hervey's death. Therefore, since he would be charged as Hervey's son and heir, it would be hard in this case to make him a stranger, despite all that has yet been said.[2]

[1] Or perhaps 'and not.'

[2] It will be observed that practically the English law of this time allowed something that was very like adoption, but all depends on the adopted son being 'in' as heir.

100. BARRE *v.* HAUTON.[1]

Forfeture de mariage, ou le heir fust receu d'averer q'il tient d'un altre par priorité.

Forfeiture de mariage, ou dit fut qe le seignour put eslire d'aver la terre ou la forfeiture pur soun avauntage et le heir avoit fet gré a un autre seignour; et non obstante il fut chacé al averement sur la priorité dil feffement.

Robert Gany[2] porta son bref de forfeture de mariage vers Rogier le fitz J. de Houtone[3] et dit coment son auncestre tynt tenemenz de ly par serviz de chevaler[4] qe dounent garde et mariage,[5] issint q'il vint a lui et lui tendi mariage avenant sanz desparagauntz en la presence A. etc.,[6] et il refusa et se maria aillours encountre sa volunté et encountre le statut, a ses damages[7] etc.

Hedon. Vous ne devetz estre r[espondu] par la r[esoun] qe vostre bref ne dist pas qe vous fustes seisi de la garde de la terre q'est le principal a quei le mariage est accessori. Jugement si etc.

Scrop. Il[8] sount ij. acciouns: un est a demaunder la garde etc.: un aultre a demaunder la forfeture, et ne poet il lesser l'un et prendre l'aultre? Par quei etc.

Hedon. Unqore ne devetz estre receu et par la r[esoun] qe après la mort nostre piere[9] si fustes seisi de la garde des terres;[10] et, depus qe vous pussetz les tenir par statut etc.[11] 'quousque' etc. jugement si a cesti bref de forfeture devetz estre receu.

Scrop. C'est a sa election prendre al un ou al aultre etc.,[12] qe possible est qe la terre q'est tenu de ly ne vaut pas xx. sous, et soun mariage par cas vaut x.[13] livres. Dount il put eslire la terre ou la forfeture.

Hedon.[14] Sire, après la mort nostre piere un Thomas de Gros,[15] de qi nostre piere tient certeynz tenementz par service de chivaler et par plus auncien feffement qe de vous,[16] fust seisi de la garde de la terre qe de luy fust tenu et de nostre corps,[17] a qi nous feymes gree

[1] *Vulg.* p. 43. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*. Second head-note from *Q*. The introductory statement is omitted by *A*, *B*, *D*, *L*, which begin with 'Nota en un bref de forfeture de mariage, Hedon. Vous.' [2] Davy *P*; David *Q*. [3] Hunt *P*. [4] *Om.* de . . . chivaler *M*. [5] *Om.* qe . . . mariage *P*, *Q*. [6] mariage saunz estre disparage scil. Alice etc. *P*. [7] *Om.* et . . . damages *P*, *Q*. [8] Il y *D*. [9] auncestre *P*. [10] seisi de la terre *P*; *sim. L*. [11] tenir outre soun age *P*. [12] prendre lun ou lautre *B*, *D*. The rest of this speech is not in *A*, *B*, *L*. We take it from *P*. In *M* it is ascribed to Hedon. In *Q* (a compressed report) it is given to Ber. [13] xx. *Q*. [14] Herle *P*. [15] G. *B.*; un T. *P*, *Q*. [16] *Ins.* happa la garde de nous et *P*; un T. happa la garde de nous *Q*. [17] *Om.* et . . . corps *P*.

100. BARRE *v.* HAUTON.[1]

In an action against an heir for forfeiture of marriage it is a good defence that by priority of feoffment the marriage belonged to another lord whose consent was obtained. The action for forfeiture of marriage is an alternative for the lord's statutory remedy of holding the land until the double value of the marriage has been obtained.

Robert Barre brought his writ of forfeiture of marriage against Robert, son of John of Hauton, and said that the defendant's father held certain tenements of the plaintiff by military services which give wardship and marriage, and that the plaintiff came and in the presence of A. etc. tendered a suitable marriage without disparagement, but the defendant refused it and married himself elsewhere against the plaintiff's will and against the Statute, to the plaintiff's damage etc.

Hedon. You ought not to be answered, for your writ does not say that you were seised of the wardship of the land, which is the principal to which the marriage is accessory. Judgment whether etc.

Scrope, J. There are two actions : one is to demand the wardship etc., and the other to demand the forfeiture. Cannot he refrain from one and betake himself to the other ? Wherefore etc.

Hedon. Still you ought not to be received, for after our father's death you were seised of the wardship of the lands, and, since you could hold them by Statute [until you had recovered double value], we demand judgment whether you should be received to this writ of forfeiture.

Scrope, J. It is at his election to betake himself to the one [course] or to the other etc., for it is possible that the land held of him is worth but twenty shillings and perhaps the marriage is worth twenty pounds. So he can elect between land and forfeiture.

Hedon. After the death of our father one William Fitz Warin, of whom our father held certain tenements by knight's service and by a more ancient feoffment than that on which you rely, was seised of the wardship of the land holden of him and of our body, and we made

[1] Proper names from the record. This case is Fitz., *Accion sur lestatut*, 23, and is cited by Coke, Sec. Inst. 91. 'The lord shall have election either to waive the land and to take the action of forfeiture of marriage . . . or to enter into the land and take the profits, till of the same he be satisfied thereby of the double value.' The statute in question is Stat. Mert. c. 6.

pur nostre mariage, com a celuy a qi nostre mariage appent; et qe[1] le mariage a luy appent[2] *racione predicta*, prest etc.

Willeby. Vous ne poetz dedire qe vous ne tenetz de nous et par service de chivaler, et qe nous vous tendymes mariage sauntz estre desparagé, et vous sauntz fere gree a[3] nous vous avetz marié. Et ceo est un bref[4] qe voet estre pledé come un bref de trespas et nient sur priorité,[5] qe de alegger priorité ne gist[6] point en sa bouche, s'il ne fust partye a demaunder ou a deforcer la garde. Jugement, si a trier la priorité devetz estre receu, forsqe a dire tauntsoulement qe la garde ne appent mye a nous.

Berr. Coment qe vous dites qe vostre bref est sur un[7] trespas, vostre accioun est[8] par r[esoun] de la tenaunce qe de vous est tenu par service de chivaler,[9] et il dit q'il tient altre tenementz de un altre par service de chivaler par plus aunciene feffement, a qi le mariage appent et nyent a vous. Coment escusereit il soun tort s'il ne poet averer la priorité ?

Willeby. Sire, et[10] nous le voloms,[11] mès q'il soit en la maniere entré[12] si bien[13] pur nous com pur eaux.

Berr.[14] concessit. Et sic ad patriam etc.

{*Wilb.*[15] Nous vous dioms q'il tynt de nous par services qe dounent garde et mariage, et nous le tendimes mariage[16] et il le refusa, a qei il ne respount nient. Jugement etc.

Staunt. Quel mestier ad il a respoundre, qar si celui qe nul dreit n'ad al mariage lui tendi[17] mariage et il refuse[18] et il ad fet a son seignour ceo qe fere deit,[19] qei ad il trespassé ?[20]

Wilb. Q'il tent de nous par les services avantditz[21] et par eigné feffement, prest etc.

Et alii econtra.[22]}

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 248, Northam.

Robert, son and heir of John of Hauton, was summoned to answer Robert Barre to a writ stating that, whereas the defendant's marriage belongs to the plaintiff since the defendant's father held of the plaintiff by military service, and the plaintiff while the defendant was under age frequently

[1] qi *A.* [2] appendoit *B*, *D.* [3] de *P.* [4] *Ins.* qe soune tut en trespas et *P.* [5] *Ins.* de feffement *L.* [6] qe naturelement ne git *P*, *L.* [7] bref soune tut en *P*, *L.* [8] *Ins.* tut *L.* [9] *Om. until after next* chivaler *B.* [10] *Om.* et *L.* [11] *Ins.* s[cilicet] *A*, *D*; *om. B.* [12] *Om.* entre *A*; *ins.* entre et *B.* [13] entre qe ceo soyt auxi bien *L.* [14] eux quod Ber. *B.* [15] In *M*, *P*, *Q* what follows takes the place of the last two paragraphs. [16] *Om.* et . . . mariage *M.* [17] tendist *P.* [18] refusa *Q.* [19] *Ins.* jugement *M.* [20] qel tort ad il fet *P*, *Q.* [21] service de chivaler *Q.* [22] *Om.* et alii econtra *P.*

agreement for our marriage with him as with the person to whom, for the reason aforesaid, our marriage belonged etc.

Willoughby. You cannot deny that you hold of us, and by knight's service; or that we tendered to you a marriage without disparagement; or that you have married without making agreement with us. And this is a writ which sounds in trespass and requires to be pleaded like a writ of trespass and not upon a priority [of feoffment], for an allegation of priority does not lie in a person's mouth unless he is demanding or deforcing the wardship. Judgment, whether you ought to be received to try the priority, or do otherwise than merely deny that the wardship belongs to us.

Bereford, J. Although you say that your writ is [founded] upon a trespass, the cause of your action is the tenancy holden of you by knight's service. And he tells you that he holds other tenements of another by knight's service and by more ancient feoffment, and that the marriage belongs to this other lord and not to you. How could he excuse his tort if he could not aver the priority?

Willoughby. Well, Sir, we consent; but let [the issue] be entered in such a manner that it may be as fair for us as for them.

Bereford consented to this. And so to the country.

{*Willoughby.*[1] We tell you that he held of us by services which give wardship and marriage, and that he refused our tender of a marriage; and to this he makes no answer. Judgment etc.

Stanton, J. What need has he to answer if the tender was made by one who had no right to the marriage, and he has done to his lord what he ought to do? What is his trespass?

Willoughby. Ready to aver that he holds of us by the said services and by anterior feoffment.

Issue joined.}

Note from the Record (*continued*).

offered to him a competent marriage without disparagement, according to the statute, the defendant, utterly refusing it, had married himself without the plaintiff's will and licence, no satisfaction having been made to the plaintiff. The declaration states that the defendant's father, John of Hauton (whose heir he is), held of the plaintiff a messuage and three virgates of land in Great Billynge by homage and fealty and by making suit to the plaintiff's court of Billinge from three weeks to three weeks, and by the service of a pound of pepper at Christmas and by 5*s.* 9*d.* towards a scutage of forty shillings; and that he died in the plaintiff's homage; and that

[1] This ending of the case may be regarded as an alternative for the last two paragraphs.

Note from the Record (*continued*).

thereby the marriage of the defendant belongs to the plaintiff; and that the plaintiff on [5 June, 1306] Sunday next after Trinity in 34 Edw. I. at Stouton in the county of Buckingham in the presence of Robert of Lathbury, Robert of Hyntes, John Lovent, and Robert Barry, parson of the church of Stouton, offered to the defendant while he was within age etc. according to the statute etc. a competent marriage, to wit, Cecily daughter of William of Weston, without disparagement; but that the defendant refused that marriage and without the plaintiff's licence married himself, no satisfaction having been made to the plaintiff against the form of the statute etc., to the damage of the plaintiff laid at 100*l.*

The end of the plaintiff's declaration runs as follows: et [cum] idem Robertus, die dominica proxima post festum S. Trin. an. reg. dom. Reg. Edw. pat. Reg. nunc tricesimo quarto apud Stoutone in com. Buk. in presencia Rob. de Lathebury, Rob. de Hyntes, Joh. Lovent et Rob. Barry persone ecclesie de Stoutone, optulisset eidem Roberto dum fuit infra etatem etc. iuxta statutum etc. competens maritagium, videlicet Ceciliam filiam Willelmi de Westone, absque disparagacione, idem Robertus filius Johannis, maritagium illud omnino recusans, se sine licencia maritavit nulla satisfaccione eidem Roberto Barre facta, contra formam statuti etc.

The defendant pleads that his father John held of one William Fitz Warin a messuage and half a virgate of land in Wylegby by military service, to wit, by homage and fealty and the service of two pence to a scutage of 40*s.*; and that his marriage belonged to William by priority of feoffment; and that on the death of John, his father, William at once seised his (the defendant's) body; and that the defendant has made satisfaction to William for his marriage; wherefore the defendant denies that his marriage belongs to the plaintiff as the plaintiff says; and of this he puts himself upon the country.

The plaintiff replies that the defendant's father and his ancestors held the tenements in Great Billynge by military service of the plaintiff and his ancestors before they held the tenements in Wylughby by like service of William Fitz Warin, so that the marriage of the said heir belonged to the plaintiff and not to William; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of Martinmas.

APPENDIX I.

ADDITIONAL RECORDS.

§ 1. *Wyclewode* v. *Waunforde.*

The record of this case (reported above, p. 91) has been found upon the De Banco Roll, Michaelmas, 2 Edw. II. (No. 173) r. 32d. Robert of Wyclewode brings a writ of debt for twelve marks against Anselm of Waunforde. The count states that on [6 Dec. 1305] Monday next before the feast of the Conception of the B. V. Mary in 34 Edward I. at Mildenhale a covenant was made between Robert and Anselm to the effect that as Anselm had sold to Robert a moiety of twelve acres of land in Wyclewode which was of the right and inheritance of Joan his wife, to hold to Robert and his heirs, Anselm and Joan would come here on this side of the fourth day after the quindene of Easter next to levy a fine between them, and that if they should not do this they thenceforth confessed themselves bound to Robert in twelve marks. The count further states that Robert purchased a writ of covenant between them touching the said moiety, returnable on [9 Feb.] the octave of the Purification; and that on the said day Anselm and Joan had themselves essoined, and had a day by their essoiner here on [17 April] the quindene of Easter then next; and that on that day they made default, so that by the default of Anselm the fine is not yet levied, whereby an action to demand the twelve marks accrued to the plaintiff; and that Anselm has not paid, but refuses to pay them, to the plaintiff's damage, laid at a hundred shillings. The plaintiff produces a writing under the name of Anselm, which witnesses the debt in form aforesaid.

And Anselm by his attorney confesses the writing to be his deed, and cannot deny that Robert brought the writ of covenant on the said day, or that by Anselm's default the fine is not yet levied. So it is awarded that Robert recover against him the twelve marks and his damages, which are taxed by the Justices at forty shillings; and that Anselm be in mercy. An *elegit* is issued for the plaintiff.

§ 2. *Pykerel* v. *De la Le.*

The record of this case (reported above, p. 92) has been found upon the De Banco Roll, Easter, 1 Edw. II. (No. 170), r. 34, Essex.

Heretofore an assize came before William Howard and his fellows, justices

of assize for Essex, to find whether John de la Le and Katherine his wife and Thomas his son and William Humfrey unjustly disseised Peter Pykerel of his free tenement in Hatfield Regis, whose plaint comprised a hundred and twenty acres of land, six and a half of meadow, five and a rood of pasture, and rent to the amount of nineteen shillings and four and a half pence.

John came. The others came not. Therefore the assize was to be taken against them by default. John pleaded nontenure except as to thirty-seven acres of land which are of the base tenure of the ancient demesne ('que sunt de bassa tenura de antiquo dominico domini Regis'), and are not pleadable elsewhere than in the court of the Earl of Hereford at Hatfield, where no writ runs except the little writ of right.

Peter pleaded that, no matter what John might say about the tenements being of the ancient demesne, one William of Haselingfeld, who held them in fee, acknowledged himself by statute merchant bound to him and his wife Katherine in a hundred pounds, payable at certain terms; and that, because William did not pay the money, the tenements were delivered to Peter and Katherine by writ, to hold by way of freehold ('nomine liberi tenementi') until they should have levied the money; and that under this writ Peter was peacefully seised and long continued his estate until John and the others unjustly disseised him.

Issue was joined on this plea. The assize was taken. The jurors said that the thirty-seven acres and the other tenements are of the ancient demesne; and that William of Hanyngfeld, who held them in fee, bound himself in a statute merchant, before the Mayor of London and the clerk deputed for this purpose, to Peter and Katherine his wife in a hundred pounds; and that after default in payment Peter purchased a writ to the sheriff, who returned that William could not be found; and that Peter then sued a writ of *capias* against William, returnable on the octave of Candlemas; and that at Christmas, after the purchase of the writ, John de la Le purchased the thirty-seven acres from William and sowed them with spring seed; and that afterwards at Mid-Lent Thomas de la Le purchased the residue of the tenements from William—to wit, what was sown with winter seed as well as what was sown with spring seed; and that afterwards, about the quindene of Easter, the sheriff delivered to Peter seisin of the tenements with the goods and chattels there being, and as well of the messuages as of the other tenements, to hold by way (*nomine*) of freehold; and that Peter fallowed (*warettavit*) and afterwards mowed and took other profits of the tenements until the next autumn, when John came and took the crops growing on the thirty-seven acres, and Thomas took those growing on the residue, and with force and arms they took and carried away as well what was sown with winter seed as what was sown with spring seed. And the jurors being asked who thenceforth took the profits said: No one, but the land always lay fresh and untilled, for no one would labour in it or depasture it. The damages (if any) were taxed by the jurors at sixteen pounds five shillings. A day was given to hear judgment at Westminster on the quindene of Candlemas.

On that day Peter comes. John does not come, but William of Goldington answers for him as bailiff. Peter instantly prays judgment. He is then adjourned before the Justices of the Bench. On his appearance there, Domesday Book is inspected, and it appears that the manor of Hatfield Regis is of the ancient demesne; but since the Court is not informed whether the tenements for which the assize was arramed and taken are of the base tenure or of another ('set quia non constat curie utrum . . . . sint de bassa tenura an de alia etc.'), the sheriff is ordered to cause the jurors of the assize to come on Michaelmas three weeks to certify etc.

At that day the jurors come, and, being re-examined by the Justices as to whether the tenements are of the base tenure of the said manor or not, they say upon their oath that the tenements are not of the base tenure of the said manor, but are of frank fee ('non sunt de bassa tenura eiusdem manerii immo de libero feodo'). They also say that in time past ('temporibus retroactis') the tenements were bought and sold as frank fee by charters. And because it is found by the assize that Peter was seised of the tenements as of his freehold, according to the form of the said Statute [Merchant], and was disseised by John and the others by force and arms, therefore it is considered that Peter recover his seisin thereof according to the form of the said Statute until [the money due to him be levied], and [that he also recover] his said damages. And let John and the others be taken etc.

In considering this case we should remember that the Statute Merchant of 1285 said: 'E qaunt les terres al detturs serrunt liverez as marchaunz, si eit seisine de totes les terres qe furent en la main le dettur le jour qe la conoissance fu fete, en qi mein qe eles serrunt après devenuz ou par feffement ou par autre manere.' Also it will be remembered that the creditor was to have 'tele seisine q'il puisse porter bref de novele disseisine s'il seit engeté e rediseisine autresi cum de frank tenement.' As Coke says, the creditor had 'a similitude of freehold.' (Co. Lit. 43b.)

APPENDIX II.

ADDITIONAL REPORTS.

The MS. Brit. Mus. Add. 35116 (which we propose to call Δ) is not in strictness a volume of Year Books. It is a volume of select cases of the later years of Edward I. and the earlier years of Edward II., arranged, not in chronological, but in legal order under such titles as 'Right,' 'Entry,' and so forth. It is a handsome book, and we hope to make good use of it hereafter. On the present occasion we are only able to make by its help a few observations about some cases that have been printed above from other manuscripts.

§ 1. *Bardolf* v. *The Prioress of B.* (*above*, *p.* 115).

In this case counsel argues that a tenant in tail of a seignory cannot bring a writ of customs and services because, if the tenant in the action disclaimed, a mere tenant in tail would not be able to bring a writ of right founded on the disclaimer. Bereford then, in our version, says this (p. 117):

> As to the disclaimer I answer you that on a disclaimer the tenant shall not always go quit out of the court straightway upon his disclaimer; for if a man disclaims against one who is a tenant by the curtesy or against a woman who holds in dower, he shall not be quit at once; for the woman may reply that she cannot be party to so high an answer, which gives an action to be pleaded in the right, and she would pray aid of the heir to whom an action accrues by the disclaimer, or he [the tenant] will be forced to answer over to the seisin [alleged by the demandant], to which averment the woman *cannot* be a party.

Instead of the *cannot* here printed in italics, MS. Δ enables us to read *can*. Instead of 'ne porra mye estre partie,' it gives 'purreit estre partie.' This seems preferable. A woman brings an action of dower founded on her husband's seisin. The tenant in the action disclaims. He will not be allowed to go quit at once. Either the doweress will pray aid of her husband's heir, on the ground that the disclaimer has raised a question of 'right,' or else the tenant will be driven to answer to the alleged seisin, to which averment, since it does not touch the 'right,' the woman *can* be a party.

§ 2. *Anon.* (*above*, *p.* 130).

The reader will see in this case the words 'le play bastard vous salve,' which we translated by 'the Bastard case saves you.' Our supposition that a proper name was introduced is confirmed by MS. Δ. It gives

> Et estre ceo le plee Busard vous salve; et fust en le plee Busard cele excepcion alleggé contre le demandant, a qui fust respondu q'il entra com tolour, par quei sa seisine ne duist barrer; et fust ousté de cele excepcion par agarde; et donqes voucha il outre soun feffour, qi vient en court et rendy [*sic*] par jugement. Par quei nous demandoms jugement depuis qe C. fust nostre tolour et sa felonie, etc.: jugement si sa seisine [etc.].

Then a fuller and more intelligible version of Cressingham's judgment is given, for the end of the case runs thus:

> *Cressingham* fist appeller Johan de Lungeby et voleit aler a jugement sur ceste clamer. Johan aparceut qe sun clamer fust feble et fist defaute; donques les serianz prieront a la justice qe H. [Hughe de

Cressingham ?] deist sun avis del clamer. *Cressingham.* Celui qe voet clamer par mesme la descente il covient q'il face sa descente par mesme la line ou par line semblable. Mès ore est ceo issint qe nule rien puet resortir si noun par defaute de saunke en la line, et cestui Johan est issue de une Felice qe fust aunte Robert qe porte ceo bref et la seisine Robert pere cesti Robert est conue et qe cestui Robert est son fiz, et nule chose ne puet resorter si noun par defaute de saunke en la line. Par qei le clamer ne gist mie en ceo cas ; mès en cas la ou le puisné frere entre les tenemenz après la mort le commun auncestre il puet abatre le mortdancestre par le clamer. Et hec est racio, pur ceo q'il cleime par meisme la descente et fet la descente par mesme la line ou par line semblable. Et pur ceo viegne l'assise.

The substance of this decision might apparently be stated thus :—The mort d'ancestor can be abated by a 'claim.' A 'claim' can be made by one who descends from the ancestor named in the writ. Thus if *B*, who is *A*'s eldest son, brings an assize on the death of *A* against his (*B*'s) younger brother *C*, this assize can be abated by the claim of *C*. But an assize by one who descends from the ancestor named in the writ cannot be abated by one who does not so descend. In the present case the assize of the son cannot be abated by a claim of a great-nephew or a great-great-nephew.

In various ways MS. Δ confirms our suspicion that this case belongs, not to Edward II.'s, but to Edward I.'s reign.

§ 3. *Anon.* (*p.* 171).

In MS. Δ this case appears as a writ of *cui in vita* brought by 'Johane qe fu la femme Hughe de Carliol vers James le Espicer du doun Elmo [*corr.* de Dunelmo : *Angl.* of Durham].' To the objection brought against the writ Bereford, J., makes this reply :

Beref. Cestui bref fust formé en la Chancelerie en [*corr.* einz] qe vous et moy nasquimes, car vous n'estes mie en le cas com si ele ove soun baron eussent purchacé tenemenz etc., ou ele meime etc. eust purchacé etc., dount nostre [*corr.* vostre] excepcion liereit bien ; car en cas de mariage la femme si est la cause du mariage, par quele cause le droit reposa [*sic*] en sa persone tote sa vie ; car en autre cas le bref serroit malvoise si ele ne feist mencion du donour. [This writ was devised in the Chancery before ever you and I were born. You are not in a case in which the woman and her husband have purchased tenements, nor in one in which she has purchased : in which cases your objection would hold good. But in the case of a marriage portion the woman herself is the *causa* of the marriage, and for this cause the right remains in her person all her life. In other cases the writ would be bad if it did not name the donor.]

Then we are told that Touth[eby], who was counsel for the tenant, affirmed this reasoning : that is, he admitted the force of Bereford's statement.

§ 4. *Meldon* v. *Abbot of Beaulieu* (*p.* 130).

In a manuscript at Lincoln's Inn (Hale 188, f. 27 d), which contains cases of Edward I.'s reign, we have come upon a report which, if it be not a report of this case, is a report of an extremely similar case between the same parties. Michael of Meldon brings replevin against the Abbot. Sutton avows for rent and suit arrear in terms closely similar to those of the avowry printed above. One Robert died, leaving two daughters, Felice and Alice; Felice enfeoffed Michael, who attorned to the Abbot, and Alice's share descended to John. Thereupon 'Warr' [Warwick?] demands judgment on the form of the avowry, taking the point that is taken by Herle in our version. 'Ing' [Inge?] defends the form of the avowry as agreeing with the facts of the case. 'King' [Kingsmede?] then speaks for the plaintiff to the following effect: 'You have confessed that you received the plaintiff as a stranger and purchaser. Besides, even if they [Michael and John] were parceners, you could not avow upon them in common, because if two or three parceners make partition of the inheritance and each attorns for his share to the chief lord, then if afterwards the rent falls arrear the lord can only distrain on each of them for his portion.' 'Warr' supports this reasoning. 'Ing,' on the other hand, urges that if the services have not been severed the avowry cannot be severed. 'I put case,' says he, 'that there are two parceners, one of whom is under age; the lord has one half of the heritage by way of wardship; and so long as the wardship endures one moiety of the services will be unpaid; and none the less, when the parcener comes to his lawful age and the rent is arrear, the lord can distrain the best acre ('la meudre acre') for the whole of his services and avow upon the two in common.' Thereupon Met[ingham] speaks: 'Whereas you say that the service etc. [*i.e.* that the service cannot be severed,] that is false both by the old law and the new. For by the statute [*Quia emptores*], if a man holds of you ten acres and alienates one acre to be held of you by the services which belong to the tenement, you are constrained by statute to receive him [the alienee] as tenant for the parcel that he holds, so that you can charge that acre only with the tenth penny *pro rata*. And by the old law, if one H. holds of you ten acres and alienates two to be held of you, there you will not be constrained to receive him [the alienee] as your tenant against your will, so that you can distrain the two acres for the whole service; but if you do receive him as your tenant, that reception makes him privy, so that you cannot distrain the two acres in his tenancy for the rent which the eight acres owe. So your dictum does not hold good' ('vostre dit ne se tent pas'). Then 'Heyham' urges that if undue services were demanded John would have the *ne vexes*, but Michael could not join him in the writ, being a strange purchaser. This same point about the *ne iniuste vexes* is taken in the case that we have printed (p. 123).

The two reports seem to tell of one and the same cause of dispute, but of two different debates and probably of two different actions. Replevin being a personal action, there was nothing to prevent a lord from raising

what was substantially the same question many times. Metingham, who had been C. J. C. B., died some years before the accession of Edward II., and the names of the interlocutors in the two reports are different, though in both cases 'Warr' and 'King' appear as counsel for the plaintiff. It would seem that 'King' should be extended as 'Kingsmede,' though 'Kingesham' is often written in full. As to the extension of 'Warr,' we are yet uncertain.

The report in the Lincoln's Inn MS. shows us stenography carried to unusual lengths. The word *services* is represented by the one letter *s*, and we have been obliged to guess that 'p. l. a.' stands for *par ley aunciene* ('by the old law').

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2	Assisa venit recognitura si Priorissa . . .	4
2	Nota que le demaundaunt .	5
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3	Symon de Hoine . .	6
3	James de Dodingham .	10
4	Nota per Pass. Si le baroun	10
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4	Symon de Paris . . .	11
4	La Priorissa de B. . .	14
4	Quid juris clamat . .	14
5	Une femme porta breve de dower	16
5	Mestre A. de B.. . .	17
5	Breve de dower fuist porte .	18
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5	Une feme porta son breve de dower . . .	19
6	Johan de Ostover . .	20
6	Une feme porta breve de dower	21
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6	Un home et sa feme porter' breve	24

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8	Labbe de S. porta soun breve	36
8	Johan de Rynes . .	37
9	Une Will' se pleint q'une Jon	37
9	En un breve de dowere .	38
9	La prioresse de C. se pleint	39
9	Ceo vous monstre etc.[1] .	39
10	Margerie qe fuist la feme Sir William . . .	43
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12	Un A. porta breve de imprisounment . . .	56
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16	Un Jon porta soun breve de fourmedoune . .	79
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17	Robert de Walton . .	81
17	Jordan de Wikele . .	84
18	Un Thomas se pleint . .	87
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18	Une feme porta soun breve de dowere . . .	88
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32	Will' de Wyngeton . .	135
33	Nota per Warr. . .	136
33	Labbe de Thornton . .	137
33	Une feme porta soun breve	138
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[1] Our rude scheme is this: (1) The ordinary actions for land involving no special relationship, and ranging from the most proprietary downwards to the most possessory; (2) The dower group; (3) The parcener's group; (4) The landlord and tenant group; (5) Waste; (6) The easement and profit group; (7) The wardship group; (8) The advowson group; (9) The strictly personal group, excluding replevin; (10) Criminal proceedings; (11) Proceedings of second instance, e.g. Error, Attaint, Certification; (12) Prerogative proceedings, Quo waranto, Prohibition; (13) Judicial writs, e.g. Scire facias, Per quae servitia, etc. A series of such tables similarly arranged would teach some history.

TABLE OF CASES.

MICHAELMAS, 1 EDWARD II.

1. Maulay *v.* Driby . . . 1

Land was given to husband and wife in special tail. The donor died, leaving the husband as his heir. In a writ of right the land was recovered from the husband after a verdict upon a plea of nontenure. The husband and wife are now dead without issue. *Qu.* whether the recovery is a bar to a writ of formedon in the reverter brought by the heir of the donor against the heir of the recoveror.

2. Hayward *v.* Kilburn [Prioress of]. 4

An assize for a corody and a chamber in a religious house will not lie against the head of the house unless the plaintiff shows a specialty, although he desires to aver seisin.

3. Anon. 5

An attorney appointed for the defence of an action is not thereby empowered to defend proceedings consequential on the judgment, *e.g.* in a *scire facias*.

HILARY, 1 EDWARD II.

1. Kyme *v.* Leake 6

Qu. whether a fine levied upon a writ of *warantia cartae* can be pleaded in bar to an assize of last presentation. Is any seisin of the advowson vested in the conusee by the fine before he presents?

2. Cobham *v.* Payforer . . . 10

Replevin: the defendant avows upon a stranger in right of his (the defendant's) wife. Aid of the wife is granted and the process for bringing her before the Court is discussed.

EASTER, 1 EDWARD II.

1 Paris *v.* Page 11

To a plea justifying an assault on the ground that the plaintiff was the defendant's villein and found in his villein nest it is not a good reply that the plaintiff is a citizen of London and has been sheriff. The defendant is driven to allege seisin on the day of the assault.

2. Barking [Abbess of] *v.* Webbele . 14

When a fine is being levied in favour of a religious house, the Court may order an inquest as to the evasion of the Statute of Mortmain.

3. Vaus *v.* Babraham . . . 14

Husband and wife are enfeoffed to them and their heirs, and seisin is delivered. The feoffor by a fine, at the levying of which the wife is not present in person, confesses a feoffment to the husband and wife and the heirs of the husband. *Qu.* whether this affects the wife's estate under the feoffment.

4. Anon. 16

The tenant in an action makes default. The petty *cape* issues. Before its return the King dies. The tenant is resummoned and appears. He cannot be called upon to save his default.

5. Anon. 17

In *scire facias* the defendant cannot plead a release unless he appears on the first day.

6. Anon. 18

A writ of dower against man and wife is abated by the plea that the wife has nothing except as guardian of an heir and is not styled guardian in the writ.

7. Anon. **18**

A lord cannot avow for services exceeding those mentioned in the charter by which the tenant holds the land, though the lord is ready to aver seisin of greater services by the hand of the plaintiff.

8. Neville *v.* **Rokele** . . . **19**

Examination by the Court of persons who are returned as summoners, but who, it is alleged, made no summons. A summons by one summoner is insufficient.

9. Etton *v.* **Barne** **20**

Semble that, where land which is subject to rights of common has been completely enclosed for a year and more, the commoners are not justified in breaking the close.

10. Maundeville *v.* **Fitzpayn** . . **21**

In an action of dower where the tenant pleads that the husband is still living, is the tenant bound to say where the husband lives or must the demandant say where he died? Amendment of pleadings and trial by the bishop's certificate illustrated.

11. Luterel *v.* **Metheringham** . . **23**

A tenant vouches. The demandant says that the vouchee is dead. The tenant denies this. The vouchee is to be summoned at the tenant's peril.

12. Brandon *v.* **Brandon** . . . **24**

An infant who is not in wardship can be vouched to warranty.

13. Underwood *v.* **Furneaux** . . **24**

In an action for dower against a guardian it is a good plea that the doweress has eloigned the heir. In answer to a plea of partial nontenure it is urged that the tenant answered for the whole in a previous action.

14. Anon. **25**

In an action for admeasurement of pasture a view is granted. The tenant abates the writ by the plea that he is jointly enfeoffed with his wife, who is not named.

TRINITY, 1 EDWARD II.

1. Blaket *v.* **Vache** **27**

A person (*A*) having a right of common executes a release of it in favour of the terre tenant (*M*) and then enfeoffs another person (*B*) of the tenement to which the right is appendant. After, as well as before, the release, the feoffor (*A*) and (after the feoffment) the feoffee (*B*) continue to turn out beasts. *Qu.* whether *M* can distrain them as damage feasant or whether the release is ineffectual against the continuous seisin.

2. Knyveton *v.* **Newboth [Abbot of]** . **31**

An advowson is conveyed to husband and wife and their heirs. While the wife is still an infant the church falls vacant and a stranger presents. The husband dies. At the next vacancy the widow brings a possessory action against the stranger. *Held* that she cannot recover, for she is not within Stat. Westm. II. c. 5, which is applicable to cases in which the infant or married woman has come to the advowson by inheritance.

3. Pastrel *v.* **Amory** . . . **32**

It appears by a deed executed by a woman that she demised tenements to a man for his life for a sum of money paid down and a yearly rent. *Qu.* whether she can aver that this man had entry into the tenements by reason of a marriage proposed between them, and so can bring a writ of entry *causa matrimonii prelocuti* against his assign. The tenant in such an action desires to rely, not only on the said demise, but on a later release in fee executed by the woman: *qu.* whether he can do this, and if so how.

4. Eure *v.* **Meynill** **34**

An action of annuity will lie for the arrears of a rent-charge, notwithstanding the power of distress. In an action on a deed the defendant is admitted to plead that at the time of the making of the deed he was in prison, without saying that the imprisonment was at the plaintiff's suit.

5. Anon. **36**

Trespass against a parson for taking corn. A plea that the corn was the defendant's tithe severed from the nine parts is allowed and traversed.

6. Anon. 37

A man and a woman are levying a fine as husband and wife. An intervener asserts that the woman is his wife and ravished from him and that an action for the ravishment is pending. Fine refused.

7. Hemegrave *v.* Bernake. . . 37

The husband of a tenant in dower brings replevin. Avowry is made on the heir of the doweress's first husband for a relief in arrear. The husband has aid of his wife; and then they have aid of the heir.

8. Anon. 38

View refused in a writ of dower where the husband died seised, even though the tenant alleges that he did not enter by the husband.

9. Anon. 39

A plaintiff in replevin prescribes to have common in one vill for beasts levant and couchant in another.

10. Anon. 39

A son brings a writ of detinue in common form against his father's executors for a bairn's part of his father's goods. The count relies upon a usage of the country. The writ is upheld against the objection that the matter is one for the ecclesiastical court. The objection that the plaintiff has a sister not named in the writ is raised, but not maintained. The defendants plead that the plaintiff was 'advanced' by his father. The plaintiff, admitting that a certain gift of land was made, denies that it was an advancement. Demurrer.

SECOND YEAR OF EDWARD II.

1. Anon. 42

An appeal of homicide brought by one who has an elder brother living is abateable. *Semble* that this would be so even if the elder brother were in holy orders.

2. Mortimer *v.* Ludlow . . . 43

In an action for land by *A* against *B*, the tenant (*B*) pleads that he is not fully tenant, since *X* has recovered against him by judgment seisin of a third part. The demandant (*A*) after endeavouring to reply (1) that *B* was seised of the whole at the date of writ purchased, and (2) that *X* was not seised under the judgment at the date of writ purchased, is driven to the issue that *B* was seised of the whole at the date of plea pleaded. This issue is found for *A*, and he has judgment, the justices refusing to inquire whether *X* was seised under the judgment at the date of the verdict. *Per* Bereford, J.:—A judgment does not confer the freehold upon the recoveror.

3. Thackstede *v.* Frebarn. . . 48

The eldest of three brothers dies seised in fee without issue. The youngest brother enters and at once alienates. The middle brother, returning from foreign parts, attempts to enter, but is impeded. He maintains a continual claim until he dies. He leaves a daughter. She brings the mort d'ancestor as on the death of her uncle, the eldest brother. *Qu.* whether she can be repelled from the assize by the seisin of the youngest brother, or whether he is to be treated as a mere 'toller.'

4. Singleton *v.* Kirkby . . . 50

A tenant in an action of dower, who is sued as guardian of the heir, as to part of the tenements says nothing, as to a second part pleads nontenure, and as to a third part pleads that he holds, not as guardian, but under a feoffment by the husband. As to this third part, issue is taken on the question whether the husband died seised.

5. Oxborough [Parson of] *v.* Humphrey 51

A parson brings one jury *utrum* against divers tenants for divers parcels. One of them abates the writ as regards himself by a plea of joint tenure. Another pleads that the demandant is seised of fealty and service from the land demanded. *Semble* that this is a good plea. A third vouches and the demandant counterpleads the voucher. Against others the jury is taken by default.

6. Anon. 54

Two brothers are tenants for life; the reversion is in their eldest brother. He levies a fine and dies before the chirograph has been delivered or any attornment made. The conusee brings a *quid iuris clamat* against the two

brothers to compel attornment, and a writ *de chirographo capiendo* against the elder of them (the conusor's heir): and this is good.

7. **Anon.** 55

Lease of right of common. Alienation of common in gross.

8. **Anon.** 55

Writ issued against the wrong person. Correction of error in the record.

9. **Dunstable** *v.* **Horton** . . . 55

In an action for land, if the tenant asserts that he is only tenant for life and prays aid of the reversioner, he must disclose his title as tenant for life.

10. **Gold** *v.* **Brumpton** . . . 56

In an action for false imprisonment, the defendant justifies as a bailiff arresting upon hue and cry. The plaintiff replies *de iniuria*. Bailiff's power under Stat. Winton. considered.

11. **Anon.** 58

There can be no dower of a right to estovers; but an allowance in respect thereof will be made to the doweress.

12. **Stapeldon** *v.* **Stapeldon** . . 58

The preferential right to the wardship of an heir's body that belongs to one of several lords by virtue of priority of feoffment can be claimed by a person to whom that lord has granted the services of the tenant. It could be claimed by that lord's widow if those services formed part of her dower. Stat. Westm. II. (13 Edw. I.) c. 16 discussed.

13. **Simon** *v.* **Walsingham.** . . 61

In an action for land the tenant does not make an effectual disclaimer if he says that he holds in villeinage of another, but will not say that he is that other's villein. The demandant denies the tenure in villeinage alleged by the tenant, and the parties plead to issue.

14. **Braunby** *v.* **Cokesale** . . . 62

Upon a fine being levied, a *quid iuris clamat* is brought by the conusee against a tenant to compel attornment. The tenant cannot refuse to answer on the ground that the conusor is not in court. The tenant claims under a deed which apparently gives him a term of years, but says that if the lessor attempts to alienate the tenement, then the lessee (tenant in this action) is to have the fee. *Qu.* the effect of such a deed. At any rate the tenant must say distinctly whether he claims a term or the fee.

15. **Anon.** 65

In a writ of *per quae servicia* when the conusor is dead the tenant will not be compelled to attorn while the conusor's heir is an infant.

16. **Codeston** *v.* **Tunbridge [Prior of]** . 67

Replevin for an ox. Avowry for a heriot on the death of a Prior, tenant of the avowant. The avowry is pronounced to be bad, because it ascribes to the dead Prior a property in the ox which endures after his death. The avowant apparently intended to rely partly upon tenure and partly upon a custom obtaining throughout the fief of the Earl of Gloucester in a certain district.

17. **Anon.** 69

Effect of an essoin after view demanded.

18. **Anon.** 69

In an action for land against *X*, who has made default, *Y* demands to be received on the ground that *X* has entered religion and that *Y* has inherited the land in frankmarriage. Receipt refused.

19. **Anon.** 70

An action of dower is brought against a tenant in tail who makes default. His heir apparent under the entail intervenes and prays to be received to defend his right. He is received.

20. **Anon.** 72

The same question raised in two actions. Consolidation of an assize and a writ of entry. A deed, the execution of which is denied, is impounded by the Court.

21. **Devereux** *v.* **Devereux** . . 74

In a *quid iuris clamat* the tenant claims the fee under a deed of the conusor. The conusee cannot plead that if such a deed was made it was made after the conusance, but should say, without hypothesis, that it was made after the conusance. *Semble* that in a *quid iuris clamat* the tenant shall not be put to claim an estate while he is under age, even though he is in by purchase, and that those who hold jointly with the infant will not be compelled to attorn until he is of age.

22. **Anon.** 76
Warranty with a reservation of the rent due to the warrantor.

23. **Anon. or Neville** *v.* **Neville** . . 76
In an action for land against a man neither common law nor statute gives his wife a right to intervene unless she be named in the writ, although she alleges that she is jointly enfeoffed with him, and that he is losing the land by wilful default.

24. **Anon.** 78
If a lord has received homage from one parcener he cannot demand it from another while the parcenry continues. But if a parcener's share is alienated more than one homage can be demanded.

25. **Anon.** 79
An infant brings formedon in the descender. A plea is pleaded to the effect that the ancestor did not die seised. *Qu.* whether the parol should demur for the infant's nonage. Effect of a lineal warranty discussed.

26. **Anon.** 80
Grant of services of a tenant who has not attorned to the grantor.

27. **Walton** *v.* **Latimer** . . . 81
Semble that by prescription *A* may have as appurtenant to his tenement an exclusive right to depasture, during a part of every year, land that belongs to *B*. To the claim of such a right it would be a good answer that within time of memory one person was seised of both tenements.

28. **Workedeleye** *v.* **Langton** . . 84
If *A*, tenant in fee simple, enfeoffs *B* in fee tail, and *B* enfeoffs *C* in fee simple to hold of the chief lord, then if *A* takes *C*'s beasts for services in arrear, *A* may avow upon *B*. He cannot be compelled to recognize *C* as tenant; by so doing he might lose the reversion.

29. **Boyden** *v.* **Alspath** . . . 87
A landowner finding trespassers taking rabbits in his warren may be justified in taking from them, by way of distress, a ferret and nets; but he can no longer do this lawfully if the poachers have fled outside his warren. Replevin may be brought for a ferret.

30. **Anon.** 88
Semble that a release may be pleaded by a tenant who is in default without his first saving the default.

31. **Anon.** 89
Receipt of reversioner. Demurrer of the parol. View.

32. **Anon.** 89
When a writ is abated by judgment and the plaintiff at once sues a new writ, this cannot be abated by a feoffment made in the meantime. *Secus* when a writ is abated by the death of a party.

33. **Anon.** 90
Qu. whether in a *nuper obiit* the parol should demur for the tenant's nonage where his immediate ancestor died seised and is not the ancestor named in the writ.

34. **Anon.** 91
View in entry *sur cui in vita.*

35. **Wyclewode** *v.* **Waunforde** . . 91
Damages in debt, where the debt is not denied, are taxed by the Court. [*See* App. I., p. 191.]

36. **Anon.** 92
Claim of cognizance for the lord's court.

37. **Pykerel** *v.* **De la Lee** . . . 92
A tenement in the ancient demesne held by the free socage tenure of the ancient demesne and alienable without the lord's leave can be taken in execution under a statute merchant, and if the tenant by statute merchant be thence ejected he can maintain an assize of novel disseisin. The various tenures in the ancient demesne described. [*See* App. I., p. 191.]

38. **Anon.** 93
A view is allowed in an action of ael though it is alleged that the tenant is himself the abator.

39. **Anon.** 93
In an action of ael the tenant, who says that he holds for a term of years, is allowed to vouch.

40. **Anon.** 94
In an action for dower against a woman as guardian she pleads in abatement of the writ that she holds in dower. She must say by whose assignment.

41. Anon. **94**

A plaintiff in replevin is allowed aid of his wife before pleading to the avowry. A husband in his wife's absence cannot receive the homage of one of her tenants.

42. Asshewell *v.* Stanes . . . **95**

The question whether a dead person, through whom the demandant claims, was legitimate or bastard, is matter for an issue to the country and will not be sent to the Court Christian.

43. Anon. **96**

In answer to an avowry a plaintiff unsuccessfully endeavours to plead that he holds less land and by less service than the avowant has stated in the avowry, and does not hold the place where the distress was made. Difference between answering and disclaiming discussed.

44. Anon. **98**

A man brings replevin. The avowry is upon a stranger. The plaintiff has aid of his wife, but only after producing a charter that shows a joint feoffment.

45. Anon. **98**

If an attorney in an action wages law for his client, his power is thenceforth at an end. A person who appears as attorney without power may be punished by the Court.

46. Meke *v.* Norfolk **99**

Though a person has already assigned dower to a widow, she can still demand from him dower of other lands in the same vill which have come to his hands since the assignment. *Semble* it is a good plea that the widow is already endowed out of lands given in exchange for the lands in which she demands dower. *Qu.* whether there can be an exchange of an estate for life and an estate in fee.

47. Taleworthe *v.* Laufare . . **101**

Qu. whether the assertion that certain growing trees are my trees implies that they must be growing in my soil. Use of an *absque hoc* illustrated.

48. Latimer *v.* Anon. . . . **102**

In an action of dower the tenant pleads a recovery by default against the husband in a writ of entry. The demandant cannot require production of the enrolled judgment, but the tenant must plead his right in conformity with Stat. Westm. II. c. 4. That statute does not extend to a case in which the recovery that is pleaded in bar to the claim of dower was had against a stranger.

49. Osgodby *v.* Woburn [Abbot of] . **104**

A writ of *quod permittat* for pasture is upheld though it does not state whether the right is claimed by specialty or by way of appurtenancy.

50. Fressingfelde *v.* Jonesman . . **105**

In an action of ejectment from a wardship, the person who holds the wardship must be made a defendant.

51. Anon. **107**

Qu. whether the statutory action for an account against guardian in socage will lie against one to whom the guardian by right leased the wardship. *Semble* it will lie against a stranger who assumes the wardship without right.

52. Anon. **110**

Effect of a disclaimer as giving a right to enter.

53. Anon. **110**

The Court cannot take cognizance of a deed executed in foreign parts, *e.g.* at Berwick.

54. Anon. **111**

The question whether the demandant's husband is alive having been raised, a 'trial by witnesses' is awarded and the more numerous suit prevails.

55. Neudegate *v.* Atte Logge . . **112**

Replevin by *A* against *X*, who avows upon *M* for service. Plea by *A* that by judgment after verdict he recovered the tenements from *M* as from a termor holding over after a term expired, which term was created by *B*, an ancestor of *A*. The avowant desires to rely on a title which involves the assertion that *B* was never seised. *Qu.* whether, in face of the recovery, he can do this, without or with the assertion that the recovery was collusive.

56. Anon. **115**

In a writ of dower when the husband's seisin during the coverture is denied, it cannot be proved by a fine, for this will not mention the coverture.

57. Bardolf *v.* The Prioress of B. . **115**

A writ of customs and services can be brought by a man who has only an

estate tail in the seignory. *Qu.* whether he could bring a *cessavit*. Discussion of the various forms of the writ of customs and services, and discussion of the power to take advantage of a disclaimer. [*See* App. II., p. 194.]

58. Anon. **119**

C holds of *B* at a rent of ten pounds, and *B* of *A* at a rent of four. If *A* purchases the tenements from *B*, the mesne seignory is extinct; but *semble* that *B* is entitled to a rent of six pounds, for which he can distrain.

59. Meldon *v.* Beaulieu [Abbot of] . **120**

If *A*, one of two parceners (*A* and *B*), enfeoffs *C* of his share of the tenement, and *C* does fealty to the lord, then the parcenry is extinct, and the lord cannot avow upon *C* and *B* jointly for the whole service, even though there has been no partition of the tenement and the lord is ready to aver seisin of the whole service by the hands of *C* and *B* as by the hand of a single tenant. [*See* App. II., p. 196.]

60. Somery [Executors of] *v.* Buster . **125**

In order that an execution creditor may obtain of the debtor's land a seisin enough to support an assize, it is sufficient that the sheriff formally delivers seisin on the land, though no esplees are taken and the debtor's family is not expelled.

61. Blaunket *v.* Simonson . . . **126**

Of two repugnant clauses in a deed the former should prevail. This rule is applied where in the premises of a deed the gift is said to be in frankmarriage but the habendum is in fee simple. *Semble* that the mort d'ancestor is not competent to the heir in tail.

62. Anon. **128**

Husband and wife claim common in right of the wife. A writ of replevin brought by them is upheld against the objection that the wife, having no property in the beasts that were taken in distress, ought not to have been joined as plaintiff. *Qu.* whether common in gross can be claimed by prescription.

63. Anon. **130**

In a mort d'ancestor the defendant makes an unsuccessful attempt to maintain the exception that a person other than the ancestor named in the writ was 'last seised.' He then vouches that person, who unsuccessfully attempts to abate the assize by a 'claim' that he is of one blood with the plaintiff. Discussion of the cases in which a plea of 'last seisin' and a 'claim' are admissible. [*See* App. II., p. 194.]

64. Anon. **132**

A enfeoffs *M* of the manor of *C* at a rent of a hundred shillings. He then grants the seignory to *X*, and at the same time binds his manor of *B* to distress if the rent be arrear. *X* endeavours to distrain for the rent in the manor of *B*. *A* resists him. *X* brings the novel disseisin against *A* as for a rent charged on the manor of *B*. *Held* that the action cannot be maintained, as the tenant of the manor of *C* is not a party to it.

65. Wington *v.* Wington [Parson of] **135**

If the tenant received the tenement under a deed of feoffment reserving rent, the lord may distrain for rent arrear, though he has never yet had any seisin of the rent. *Semble* that the Statute *Quia emptores* does not prohibit a feoffment in fee simple to hold of the feoffor during his life, and after his death of the chief lord. If a man accepts a feoffment contrary to the Statute, *qu.* whether his feoffor cannot distrain him for services.

66. Anon. **136**

After expiration of wardship or term, *quare impedit* may be brought by the quondam guardian or termor in respect of a vacancy that occurred during the existence of the wardship or term.

67. Thornton [Abbot of] *v.* Rodeford . **137**

Qu. whether the lord of a woman can after her death demand the wardship of the body of her son and heir while her husband (the father of the infant) holds the tenement by the curtesy. At any rate, such a demand will fail if the infant be heir apparent to his father, and (in case his father were now to die) would fall into the wardship of his father's lord by virtue of priority of feoffment.

68. Anon. **138**

A writ brought against two as tenants in severalty can be abated by the plea that at the date of writ purchased they held in common, although they hold in severalty on the day of plea pleaded.

69. Anon. **139**

A brought a writ of entry against *X*, and, upon the production of a fine to which he was party, his action was dismissed. He cannot now maintain an assize of novel disseisin against *X* unless he can produce some specialty showing how the freehold has come to him since the previous action, albeit he desires to aver seisin and disseisin.

70. Anon. **141**

As a *cui in vita* cannot be used for a profit (*e.g.* a corody), the widow is allowed an assize of novel disseisin where her late husband has released a profit that belonged to her.

71. Anon. **142**

An essoin for the King's service will not lie for a woman.

72. Anon. **142**

In what cases a guardian avowing a distress can rely on a seisin older than that of the ward's immediate ancestor.

73. De L'Isle *v.* Hanred . . . **142**

The father and mother (*A* and *B*) of the demandant (*C*) being seised of land in *X* in right of *B*, the father enfeoffed *L* thereof in exchange for lands in *Y* and *Z*. Then *L* enfeoffed *M* of the land in *X*. After the deaths of *A* and *B* a writ of entry *sur cui in vita* for the land in *X* is brought by *C*, who is heir of both his parents, against *M*, the assign of *L*. Can *M*, without producing specialty in proof of the exchange and assignment, rebut *C* from this action? Can he do so if *C*, as heir of *A*, is seised of the land in *Y*? Is *M*'s case against *C* improved by the fact that he cannot vouch *L*'s heir to warranty, since the heir of *L* committed felony?

74. London *v.* Tynten . . . **145**

Action for dower *ex assensu patris*. (1) The writ is brought against a person described as guardian of the heir, not of the husband, but of the husband's father, and is upheld, the husband having died in his father's lifetime. (2) A view is granted after debate. (3) The endowment by assent may be proved by witnesses without specialty. (4) 'You have received other lands in satisfaction' is a good plea. (5) *Semble* that the grantee of a wardship, having only a chattel, cannot vouch the grantor. (6) Discussion of the various writs of dower.

75. Anon. **150**

In an action of *cessavit* the parol will demur for the nonage of the tenant.

76. Anon. **150**

A woman whose husband is making default is received to defend her right, although she is not named in the writ.

77. Cressy *v.* St. Lo **152**

In answer to a formedon in the reverter the tenant pleads a release to him by the demandant's ancestor, the donor of the estate tail. He must allege that he was seised when the release was made. To this allegation it will be no sufficient reply that the tenant in tail outlived the donor. The use of *absque hoc* illustrated.

78. Fisher *v.* Newgate . . . **155**

Semble that if a defendant, imprisoned in an action of trespass, makes a bond to the plaintiff for the payment of amends for the trespass, and thereby procures delivery from gaol, the bond is not necessarily void for duress.

79. Anon. **157**

Semble that in an action of dower the tenant can plead nontenure as to part, and as to the residue a plea in bar, *e.g.* 'never coupled in lawful wedlock.'

80. Anon. **158**

Qu. whether the *cessavit* will lie for incidents of tenure that are not periodic, *e.g.* for fealty. When the tenant is charged with being the person who ceased the service he cannot have a view. Nor can he have aid of his parceners before pleading, or after pleading a release, unless the release be denied.

81. Anon. **159**

A writ of formedon is possessory, and is subject to the same limitation in time as the mort d'ancestor.

82. Prior *v.* Parson **160**

A leased a wardship to *M* for years. *X* purchased the lease, and, while the term was running, obtained a prolongation of it from *A*, for which *X* was to pay 10*l.* This transaction was witnessed by a deed. Before the original term expired *X* was ejected by a stranger. *Semble* that he does not owe the 10*l.*, as he has not got what he bargained for.

83. Anon. **161**

If two have entered as coheirs and made partition, the one cannot afterwards be heard to say that the other is a bastard.

84. Anon. **162**

Avowry for homage. If the avowant is in court by attorney, a plea that homage has been tendered is good without the addition that the plaintiff is ready to do it. Otherwise if the avowant is present in person.

85. Anon. **163**

If *A* has bailed to *B* a charter to be delivered to *C* on *C*'s demand, it is doubtful whether *C* can sue *B* for its delivery unless he can produce a specialty witnessing the bailment. *Semble* that he cannot sue if the charter be one by which *B*'s freehold is charged.

86. Anon. **164**

A reversioner, after being received to defend his right, may render the tenement by way of fine.

87. Peytyn *v.* Chapeleyn . . . **164**

How tenant for life may be party to a fine.

88. Latimer *v.* Walton . . . **165**

In answer to an avowry for damage feasant, a way over the *locus in quo* may, without prescription or specialty, be claimed as having been enjoyed 'as of right' by the plaintiff.

89. Anon. **166**

A writ quashed for bad form.

90. Anon. **166**

There can be no remainder after a reversion, and therefore *semble* that if *A* gives land to *B* in tail, with 'reversion' to *A* and his wife for their lives, and then with remainder to *C* in fee, *C* takes nothing. Discussion of the forms of writ and count appropriate to formedon in the remainder.

91. Cressy *v.* Spalding [Prior of] . **168**

Relation of *quare impedit* to *darein presentment.*

92. Umfraville *v.* Haccombe . . **169**

In a writ of wardship the Court will not aid the tenant to vouch if he was the first to obtain possession of the heir after the ancestor's death. But in such a case the vouchee may warrant gratis.

93. Anon. **170**

Render in dower.

94. Anon. **170**

A writ of formedon in the descender can, like an assize of mort d'ancestor, be abated by a plea of last seisin.

95. Anon. **170**

An action of detinue of charter is adjourned because the defendant alleges that she is bringing an action of trespass against a person who destroyed the charter.

96. Anon. **171**

In a writ of entry *cui in vita* it is sufficient to say 'which she claims as her right and marriage portion' without naming the donor. [*See* App. II., p. 195.]

97. Fitz Pain *v.* Pouncet . . . **172**

Escheat on the death of *X* without an heir. The tenant pleads that *X* left as heir *Z*, a second cousin on his father's side. The demandant replies that *X*'s father (*Y*) was bastard. The tenant rejoins that *Y* entered as son and heir, and was seised until his death. *Semble* a good rejoinder, though the tenant is a purchaser not of the blood of *X*.

98. De la More *v.* Thwing . . **176**

On the death of *A* a manor, comprising a wood, descends to sisters. One sister's share passes by descents and feoffments to *B*. Another share descends to *C*. The wood remains unpartitioned. *B* takes a hound of *C* coursing in the wood. *Semble* that if *A* died before the time of memory (but not otherwise) *B* may be able to justify the capture by prescribing for a right of warren exercised to the exclusion of the holders of the other shares.

99. Anon. **184**

If on *A*'s death *B*, who has been recognized by *A* as his son, enters as son and heir and is seised, *semble* that a collateral kinsman will not be able to recover the tenement from *B* by the averment that *B* is the son neither of *A* nor of any wife of *A*, but of *X* and *Y*.

100. Barre *v.* Hauton . . . **188**

In an action against an heir for forfeiture of marriage, it is a good defence that by priority of feoffment the marriage belonged to another lord, whose consent was obtained. The action for forfeiture of marriage is an alternative for the lord's statutory remedy of holding the land until double the value of the marriage has been obtained.

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August 1903.

Selden Society.

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July 1901.

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Selden Society.

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